HINDU LAW IN ITS SOURCES

BY

GANGANATHA JHA

VOL. I

ALLAHABAD
THE INDIAN PRESS, LTD.
1930

Printed and published by K. Mittra at
The Indian Press, Ltd., Allahabad.

Dedicated

TO

The Sacred Memory

OF

The Guiding Spirit of my Literary Life,

BABU GOVINDA-DASA

OF

Durgakund, Benares

PREFACE

A few lines will suffice to explain the contingency of this work having been undertaken by one who has had absolutely no training as a 'lawyer.' My old lamented friend B. Govinda Dasa held strongly the opinion—which he succeeded in instilling into my mind also—that in view of the declared policy of the British Government that the personal law of the Hindus should as far as possible be administered in accordance with their own ancient laws, it is essential that these latter should be codified and made available and understandable by our judges and lawyers. To this end I moved a resolution in the Council of State in 1920. The Government of India received this proposal with due sympathy and undertook to ascertain the opinion of the more important persons and institutions in the country. After the lapse of an year I was told that the view generally expressed had been that the task of codifying the entire personal law of the Hindus was too stupendous to be undertaken and that the best course was to do the work piecemeal. I had to leave things at that. We have seen during all these ten years the trend of legislation in connection with Hindu Law on piecemeal lines. The Personal Law of the Hindus is so complicated and interrelated in its various factors that piecemeal legislation is bound to be a failure and to create greater confusion than there exists already. Even a few of the recent legislative acts and proposals suffice to give us at least one example of this confusion. There is a proposal (I do not know if it has become law yet) that in the middle of the list of inheritors of property as provided by the Hindu Law-books one or two additions should be made. This proposal loses sight of the basic fact underlying the whole fabric of our Laws of Inheritance. So far as I have been able to understand these laws the order of precedence among inheritors is strictly in accordance with the liability to offer the *Shrāddha*. If that be so, will it be right and fair to interpolate new names into the list while the legislature cannot, I suppose, interfere with the liability to perform the *Shrāddha* ? This is only one example that comes to my mind. If things go on in the same way I am sure several more confusing elements will be introduced.

All this however is not my look-out. I still think that some useful purpose would be served by presenting before unbiassed people an exact account of what is contained in all the available law-books of the Hindus.

This is what I have attempted to do in this work. I have drawn upon all the available authorities from the Vedas down to the latest digest-writers. I have let them speak for themselves. I do not think I have consciously added a single line of my own comment, because it has been my experience during my studies that people who begin to add their own comments become prone to fasten on the originals their own pre-conceived notions ; so that by the time that the work is completed the reader gets an idea, not of the original, but of what the writer of the book thinks should have been the content of the original. This is not my intention. My intention is to present before the reader exactly what the old writers have said. The one defect of my work therefore which will be

manifest is that it is crude and undigested. All that I can say in defence is that it is intentionally so, because almost every branch of our ancient literature, specially Philosophy and Law, has suffered by the process of 'digesting' and I have therefore studiously avoided it. It will be seen that I have not tried to slur over or cenceal anything, not even those things that may be considered by the wiser present-day Hindu to be a blot on his glorious culture. It is for the reader to judge if I have succeeded in giving him a true and intelligible account of the contents of our law-books.

The first four chapters deal with Procedure and Evidence. The interest of readers in these subjects will be purely academical, or, at best, historical. It has therefore not been thought necessary to add the original Sanskrit texts. Chapter V and the rest deal with the Laws relating to Debt and the other 'titles of law,' incorporating the whole of our Civil and Criminal Law. As portions of these may still have some bearing on the practical administration of law in this country, it was considered advisable,—particularly at the instance of my friend and neighbour Pandit Narmadeshwar Prasad Upadhyaya of the High Court Bar—to add the original Sanskrit texts.

The present volume deals with *Seventeen* out of the *Eighteen* 'Heads of Dispute' under which Hindu Law has been classified ; the eighteenth Head of 'Inheritance' will be dealt with in the second volume which is ready and in the Press.

THE UNIVERSITY,
Allahabad,
October 10, 1930.

GANGANATHA JHA

CONTENTS

Kullūka on Manu 2.6—

'*Āchāra*' stands for the *practice* of dressing oneself in blankets or tree-bark and so forth. '*Sādhūnām*,' of the Good, *i.e.*, of righteous persons.

Rāghavānanda on Manu 2.6—

Such practice as the tying of the bracelet during marriage and so forth, which is current among '*Sādhus*,' *i.e.*, people free from ill-feeling.

Nandana on Manu 2.6—

Nandana takes 'Āchāra, by itself and offering no remarks about it, construes '*Sādhūnām*' with '*Ātmanastuṣṭiḥ*.'

Vishvarūpa on Yājñavalkya 1.7—

'*Sadāchāra*' stands for those *religious* or *spiritual* (as distinguished from temporal or worldly) acts that are done by such men as are free from selfishness, hypocrisy and other defects.—This is mentioned apart from '*Smṛti*, '(1) because there is no compilation of the said practices, as there is of the ordinances; and (2) the trustworthiness of *practices* is doubtful, which is not the case with *Smṛti*.

Aparārka on Yājñavalkya 1.7—

'*Sadāchāra*' is the practice of *cultured* people, *i.e.*, such people as are free from ill-will and vanity, possessed of sufficient funds, (*i.e.*, not in want of livelihood), not greedy, free from hypocrisy, haughtiness, avarice, stupidity and anger; those who have studied the Veda and its supplements in the right manner, and are expert in making deductions therefrom (Bodhāyana),—the supplements being the Itihāsas, Purāṇas, and also Grammar and the other subsidiary sciences; 'those expert in making deductions therefrom' are those versed in the Smṛtis—the latter being regarded as *indicative* of the Veda. When the texts speak of '*Sadāchāra*' as an authority what they refer to is the fact that the customs obtaining in *Brahmāvarta* and other civilised lands are all based on the Veda (and not that custom *qua* custom is to be accepted as in itself authoritative); any custom that is repugnant to any clear text of the Veda is to be rejected. Vashiṣṭha's declaration that 'all the customs current in *Āryāvarta* are authority' means that *most* of them are so; as is clear from another declaration of Vashiṣṭha that 'customs of the cultured are to be accepted

as authority only on points where no Veda or Smṛti texts are available.'

Mitākṣarā on Yājñavalkya 1.7—

Sadāchāra—practice of the *cultured,* not of the *uncultured.*

Vīramitrodaya on Yājñavalkya 1.7—

'*Sadāchāra*' is thus defined in the *Viṣṇupurāṇa* : 'Good men, free from all defects, are called *Sat* and their practice, *Ācharaṇa,* is what is called '*Sadāchāra.*' It is the sole authority in regard to the *Holākā* and such observances.

Vīramitrodaya-Paribhāṣā, pp. 8—29—

Gautama declares that such local, tribal and family customs as are repugnant to the scriptures are not authoritative;—'Scripture' here stands for '*Veda, Smṛti and Purāṇa.*' This Āchāra stands for positive virtues, as distinguished from '*Shīla,*' which stands for the negative ones.—If we connect '*Sādhūnām*' with '*āchāraḥ,*' then the meaning comes to be that the practices of even those not learned in the Veda are to be accepted as authority, when these are men free from all weaknesses and defects ; it is in this sense that in the case of *Shūdras,* the practices of one's ancestors become an authoritative source of knowledge of *Dharma.*

Parāsharamādhava, p. 100—

'*Sadāchāra*'—*e.g.*, Holākā, Udvṛṣabha.—Those who 'expound' or 'determine' these are the elders of each family or tribe.

Madanapārijāta, pp. 11-12—

Dharma depends upon 'Āchāra'—[But this term is used here in a very wide sense, being defined as]—'Āchāra is the name of that course of conduct which is enjoined in Shruti and Smṛti and which is prescribed by the Good.'—This āchāra is to be learnt from persons born in Madhyadesha and other countries :—The tract of land (*a*) between the Sarasvatī and the Dṛṣadvatī—Brahmāvarta ; (*b*) between the Himālaya and the Vindhya and between Gaṅgā and Yamunā, West of Prayāga—Madhyadesha ; (*c*) between the Himālaya and the Vindhya and the Eastern and Western Oceans—Āryāvarta.

Nṛsiṁhaprasāda-Saṁskāra—

"It is difficult to believe that the endless practices or customs that have grown, and are still growing up from time to

time, should be all based upon Vedic texts. Even Manu's declaration cannot be taken as testifyng to the authority of each and every custom. For if their authority rested upon the trustworthy character of the 'cultured' persons among whom it is current, then there would be an interdependence; the people would be 'cultured' because they follow those practices and the practices would be authoritative because they are followed by those persons. Further, customs and practices are found to vary in different parts of the country; and certainly all of these cannot be authoritative."

It is not each and every practice of the 'cultured' that we regard as authoritative; that alone can be regarded as a trustworthy guide which is done by the cultured people as 'Dharma,' that which they do knowing it to be 'righteous.'

And certainly the many misdeeds of well-known great men that are cited could not have been done by them as '*dharma*'; and when the learned regard an act as 'dharma' they must do so on the strength of some Vedic text known to them; hence these Practices and Customs also must be inferred to have their source in the Veda.

Smṛtichandrikā, p. 5—

'Āchāra' stands for the tying of the bracelet and such practices.

Ibid. p. 6—

The '*Shiṣṭas*,' 'cultured,' are defined by Manu (12. 109)—

धर्मेणाधिगतो यैस्तु वेदः सपरिबृंहणः ।
ते शिष्टा ब्राह्मणा ज्ञेयाः श्रुतिप्रत्यक्षहेतवः ॥

The परिबृंहण of the Veda being the subsidiary sciences, Itihāsa and Purāṇa. As says Bṛhaspati—

इतिहासपुराणाभ्यां वेदं समुपबृंहयेत् ।

[This occurs in the Mahābhārata also.]

On questions where we find no Shruti or Smṛti text we are to be guided by the words of the '*Pariṣad*,' 'Assembly.' Says Manu (12.108)—

अनाम्नातेषु धर्मेषु कथं स्यादिति चेद् भवेत् ।
यं शिष्टा ब्राह्मणा ब्रूयुः स धर्म्मः स्यादशङ्कितः ॥

This 'Assembly' should consist of at least 10 'cultured' men — as declared by Gautama —

अनाम्नाते दशावरैः शिष्टैरूहवद्भिः अलुब्धैः प्रशस्तं कार्यम् ।

That is, what these people say is 'good' should be done. Bodhāyana also prescribes the same number—

दशावरा परिषत् ।

Yājñavalkya says—

चत्वारो वेदधर्मज्ञाः पर्षत् त्रैविद्यमेव वा ।
सा ब्रूते यं स धर्मः स्यादेको वाऽध्यात्मवित्तमः ॥

by which the Assembly should consist either (1) of four men versed in the Veda and the Dharmashāstra, or (2) of three men each versed in three Vedas, or (3) of only one man who is the best 'knower of the philosophy of the Self.'

Manu also (12.110 and 112) fixes the number at (1) *ten*, or (2) *three* of those who are fully learned in the three Vedas.

The opinion of this 'Assembly' is as authoritative as the Veda itself,—says Yama.

Manu (4.178) sanctions the authority of 'Family Custom.'

येनास्या पितरो याता येन याताः पितामहाः ।
तेन यायात् सतां मार्गं तेन गच्छन्न रिष्यति ॥

But this can be a guide only in matters where the scriptures are found to be at variance with one another,—as is clear from the words of Sumantu—

यत्र शास्त्रगतिर्भिन्ना सर्वकर्मसु भारत ।
तस्मिन् कुलक्रमायातमाचारं त्वाचरेद् बुधः ॥

Saṁskāramayūkha, p. 1—

That '*Sadāchāra*' is authoritative which is not repugnant to *Veda* and *Smṛti* texts.

(D) SHĪLA—SAMYAKSAṄKALPAJA-KĀMA

Medhātithi on Manu 2.6—.

Medhātithi takes the two terms '*Shīla*' and '*Smṛti*' as interrelated,—the two together standing for 'conscientious

recollection' (see under 'Smṛti'); so that according to him '*Shīla*' is not a distinct means of knowing Dharma. He also suggests another explanation of '*Shīla*', by which it pertains to all acts; the meaning being that whatever one does one should do with the mind free from all 'love and hate.'

Sarvajñanārāyaṇa on Manu 2. 6—

In cases where neither Vedic nor Smṛti texts are available one's duty can be determined on the basis of the '*Shīla*' of a large number of persons learned in the Veda, *i.e.*, their 'natural inclination,' 'temperament.' In support of the authority of this we have the Vedic text which declares that 'whatever the learned man *feels* is to be regarded *saintly*.'—Wherever this is not available, we have to be guided by the '*āchāra*,' practice, of 'Sādhus.'

Kullūka on Manu 2.6—

'*Shīla*' stands for 'devotion to Brāhmaṇas, and such other qualities enumerated by Hārīta (*vide* below). According to Govindarāja however it stands for 'freedom from love and hate.'

Rāghavānanda on Manu 2.6—

'*Shīla*' is conduct, action, of those learned in the Veda, *i.e.*, those who know that the injunctions contained in the Veda are to be acted up to; or it may stand for the thirteen qualities spoken of by Hārīta (see below).

Nandana on Manu 2. 6—

Nandana defines it as 'that excellent quality of the soul which makes a man respected among the wise,' as defined in the Mahābhārata; as an example is cited that magnanimity which was shown by Yudhiṣṭhira when he asked for the life of his step-brother Nakula before that of his brother Bhīma and Arjuna, when all had been devoured by the alligator.

Yājñavalkya (1. 7) speaks of *Samyaksaṅkalpajaḥ kāmaḥ*, determination or judgment after full reflection.

On this, *Aparārka* —

This means 'that desire to act in a certain way which arises from rightful volition,' *i.e.*, the determination to attain

a certain object by a definite means in accordance with the Scriptures.

According to *Vishvarūpa* this helps only in determining one out of a number of optional alternatives.

Vīramitrodaya on Yājñavalkya 1.7—

'*Samyaksaṅkalpa*' is such volition as is free from love, hatred and such aberrations.—'*Kāma*,' a well-considered vow. Or this may be the same as what Manu has called '*Shīla*,' which has been described in the *Mahābhārata*—as consisting in knowledge and sympathy, in thought, word and act, towards all living beings.—This is called a 'source of Dharma' in the sense that it is helpful in the man possessed of this quality being better able to understand what is said in the Veda.—Hārīta has described 'Shīla' as consisting in the ten following qualities—'Devotion to Brāhmaṇas, Gods and Pitṛs, sympathy, freedom from jealousy, kindly disposition, friendliness, sweet words, mercy and calmness.'—This is to be accepted as authoritative only in regard to those cases of doing (such acts as the helping of a Brāhmaṇa) which are not covered by the Vedic injunctions bearing on the subject. According to others, however, it is the authority in regard to such determinations as 'I shall not drink water except with food.'

Another interpretation of the whole verse—'*Samyak*' (taken by itself) qualifies, '*Shruti*,' and means 'duly understood'; and it also qualifies '*Smṛti*,' where it means 'based upon the Veda';—'*Svasya*' is to be taken by itself and construed with '*āchāraḥ*'; the meaning being 'the practice or custom of *one's own* ancestors';—'*priyam ātmanaḥ*' means 'self-satisfaction'; —'*saṅkalpajaḥ kāmaḥ*' means the desire to act in a certain way after *proper reflection*; this would vary with different individuals; some men would be satisfied by the mere assertion of a trustworthy person, while others would want corroborative texts.

Mitākṣarā on Yājñavalyka 1.7—

Such desire as is not repugnant to the scriptures, *e.g.*, in such cases as the determination not to drink water except at meals.

Vīramitrodaya-Paribhāṣā, p. 10—

This means a 'well-considered vow', such as 'I shall not drink water except at meals'; or it may stand for the 'desire

to do good and so forth which arises from a proper, *i.e.*, philanthropic, determination; in this sense it stands for the same thing as the '*Shīla*' in Manu's text.

Vīramitrodaya-Paribhāṣā, pp. 8–25—

The term '*Shīla*' stands for the thirteen qualities enumerated by *Hārīta*. It stands, it will be seen, for the negative virtues, and is as such distinguished from 'Āchāra,' practice or custom, which stands for the positive ones.

On Yājñavalkya 1.7 the Vīramitrodaya identifies the *Shīla* of Manu with the '*Samyaksaṅkalpaja Kāma*' of Yājñavalkya.

Smṛtichandrikā, p. 5—

'*Shīla*' connotes freedom from love, hatred and so forth.

(E) ĀTMANAṢTUṢṬIḤ—SVASYA PRIYAM

Medhātithi on Manu 2. 6—

This 'self-satisfaction' is meant to be of those only who are 'learned in the Veda and good' (*Vedavidāṁ sādhūnām*), the idea of this being that the 'source of Dharma' is based upon the trustworthy character of the persons concerned. When the 'learned and good' feel satisfied regarding the righteousness of a certain action, that action must be accepted as right; because such men can never feel satisfied with anything that is *wrong*.—The older treatises however have explained the meaning to be that in cases of optional alternatives that alternative should be adopted in regard to which the man's own mind feels satisfied.—There is yet another explanation by which what is meant is that 'whenever one is doing anything he should keep his mind tranquil and calm'; and in this sense like '*Shīla*,' 'freedom from love and hate,' this 'self-satisfaction' also pertains to '*all acts*.'

Sarvajñanārāyaṇa on Manu 2. 6—

In cases where we have no other means of ascertaining the right course of action, we are to be guided by 'self-satisfaction'; *i.e.*, we should do that the doing of which makes us feel easy at heart and satisfies the conscience. This is inferior to '*Shīla*' and '*Āchāra*,' as it pertains to the mind of a single individual and hence is lacking in that corroboration by others which is available in the case of the other two.

Kullūka on Man 2. 6—

'Self-satisfaction' is authoritative only in regard to the choice of alternatives.

Nandana on Manu 2. 6—

Nandana construes this with '*Sādhūnām*,' by which explanation the meaning is that the self-satisfaction of exceptionally righteous persons is to be regarded as trustworthy.

Vishvarūpa on Yājñavalkya 1. 7—

The 'Self-satisfaction' meant here is such as is not incompatible with Vedic texts, and is not due to restlessness ;—the taking to renunciation, for instance, during a time when the family is in trouble, would not be 'lawful,' even though one may feel self-satisfaction in it. . . . '*Svasya cha priyam ātmanaḥ*' may also mean 'Liberation.'

Mitākṣarā on Yājñavalkya 1. 7—

'Self-satisfaction' serves to determine which one of several sanctioned alternatives has to be adopted, *e.g.*, the performance of Upanayana in the seventh or the eighth year.

Aparārka on Yājñavalkya 1. 7—

It is that which brings satisfaction to one's own mind. This is to be accepted as authority only in regard to cases that are distinctly declared to be subject to such authority, in such texts as 'when one feels that there is a load in his mind until a certain act is done, that act he shall do.'

Vīramitrodaya on Yājñavalkya 1.7—

'*Svasya priyam*' means 'self-satisfaction'; *i.e.*, the satisfaction regarding the propriety of a certain act, in the mind of such men as are steeped in Vedic lore. This same idea is expressed by Bhaṭṭa Kumārila in the words—'Trustworthiness belongs to the self-satisfaction of such persons as have their minds steeped in the moral grandeur of the Veda.' This 'self-satisfaction' must be that of the enquirer himself, and he cannot go about seeking for that of all Vedic scholars.—This is the sole authority in regard to such questions as to whether or not the performance of the expiation of a certain sin shall be repeated ; this having been declared by Bṛhaspati—'One should go on doing an act until his mind becomes *lightened*'—*i.e.*, free from the incubus

of the sinful act committed. . . Others, however, have held that 'self-satisfaction' is what determines which of the several equally authoritative alternative courses of action one shall adopt.

Vīramitrodaya-Paribhāṣā, pp. 8 -25—

'*Sādhūnām*' in Manu has to be construed with '*tuṣṭiḥ*'; the sense being that when there is a doubt as to what is 'right,' that course of action is to be accepted as 'right' with regard to which there is satisfaction among 'good men,' *i.e.*, men whose mind is steeped in Vedic lore. Such is the explanation given by the *Kalpataru*; this view has the support also of a Taittirīya text, which says—'When there are doubts regarding what is *right*, one should act in the manner that those Brāhmaṇas act who are impartial, judicious, trustworthy and highly righteous.'—This implies the authority also of the *Pariṣad*, 'Council' or 'Assembly'. . .This 'self-satisfaction' is authoritative only in the determining of one out of a number of optional alternatives, and then too it is authority only for the man himself; and the 'self-satisfaction' of one man can have no authority for another.

Nṛsiṁhaprasāda-Saṁskāra MS—

Mere self-satisfaction is not authoritative. What is meant is that when a cultured and learned man feels *satisfied* that a certain course of action is *righteous*, that satisfaction itself is to be regarded as a trustworthy guide.

Smṛtichandrikā, p. 5—

This is authority only in determining one of several optional alternatives.

COMPARATIVE AUTHORITY

Manu (2. 10)—"The Veda is to be known as '*Shruti*,' Revealed Word, and the *Dharmashāstra*, Legal Ordinances, as '*Smṛti*'; in all matters these two do not deserve to be criticised."

According to Medhātithi, 'Custom' also is included under '*Smṛti*' here. Kullūka does not accept this view; according to him the text puts the *Smṛti* distinctly above *Custom*, which means that *Custom* contrary to Smṛti is to be rejected.

Manu (2. 14) says—'Whenever there is conflict between two Vedic texts, both are to be regarded as lawful'; the same

with two Smṛti texts, adds Medhātithi; *i. e.*, the two courses of action laid down by the conflicting texts are to be treated as optional alternatives.

Vishvarūpa on Yājñavalkya 1.7—

According to Manu, in all purely spiritual matters the Veda is the highest authority; the Smṛti-writers themselves regard the authority of the Smṛti as extremely weak in comparison with that of the *Shruti;* all which leads to the conclusion that when *Smṛti* conflicts with *Shruti*, it is to be rejected.

Aparārka on Yājñavalkya 1. 7—

In the determining of Dharma, says Vyāsa, the Veda is the only pure source of knowledge,—'pure,' *i.e.*, whose authority is beyond suspicion,—all the rest are 'mixed,'—*i.e.*, their authority is open to doubt.—Hence that is the *highest* Dharma which is learnt from the Veda; what is declared in the Purāṇa and other works is the *lower* Dharma. All other works of human origin are to be rejected in the matter of Dharma . . . Vashiṣṭha says that "Dharma is that which is prescribed by Shruti and Smṛti; and it is in the absence of these that the 'Practice of the Cultured' is to be accepted as authoritative."

Saṁskāramayūkha, p. 1—

The order is (1) *Shruti*, (2) *Smṛti*, (3) *Sadāchāra*, (4) *Svasya priyam*, (5) *Samyaksaṅkalpaja kāma*. Among Smṛtis Manu is most authoritative, as says Aṅgiras—मन्वर्थविपरीता तु या स्मृतिः सा न शस्यते (*i.e.*, not to be honoured). Also the Veda itself—यद् वै मनुरवदत् तद् भेषजम्.

Smṛtichandrikā, *pp.* 15—17—

Says Manu (2.14)—श्रुतिद्वैध तु यत्र स्यात् तत्र धर्मावुभौ स्मृतौ, *i.e.*, where two *Shruti* texts are mutually contradictory, both are right; *i. e.*, the two courses laid down are to be treated as optional alternatives. The same rule applies to cases of conflict between two *Smṛti* texts; says Gautama तुल्यबलविरोधे विकल्पः—Where there is conflict between Shruti and Smṛti the latter is to be rejected; so also when Custom conflicts with Smṛti the former is rejected. When there is

conflict between Manu and another *Smṛti*, the former is to be accepted, as says Aṅgiras :—

यत् पूर्वं मनुना प्रोक्तं धर्मशास्त्रमनुत्तमम् ।
न हि तत् समतिक्रम्य वचनं हितमात्मनः ॥

Also Bṛhaspati—

वेदादुपनिबद्धत्वात् प्राधान्यं तु मनोः स्मृतम् ।

In cases where the same act is prescribed in equally authoritative texts in two different forms, we have to accept the more elaborate of the two and reject the simpler.

Vīramitrodaya-Paribhāṣā, pp. 25 – 29—

When there is conflict between two Vedic texts, both are to be regarded as equally authoritative, and in actual practice the two courses of action are to be treated as optional alternatives. Similarly when there is conflict between two Smṛti texts or between two 'customs.' When there is conflict between a Vedic text and a Smṛti text, preference is to be given to the former as possessed of inherent authority, while the latter owes its authority to an assumed Vedic text.—When there is conflict between a Smṛti text and a Custom, the Smṛti is to be regarded as the more authoritative, *e.g.*, the custom of the marrying of the maternal uncle's daughter cannot be accepted as authoritative when it is found to be in conflict with distinct Smṛti texts forbidding that practice.

There is a further distinction among authorities of the same class also. For instance, between two Vedic texts, if one is of doubtful import while the meaning of the other is clear, then the latter is to be given preference. If one treats of a more important matter than the other, it is to be given preference; *e.g.*, if one deals with something to be done, while the other, with a minor detail of the act, the former is to set aside the latter. What occurs in the opening sentence sets aside what occurs in the concluding sentence; *e.g.*, the opening sentence speaks of the 'three Vedas,' and the concluding sentence speaks of the 'Ṛk Verse' as to be recited 'loudly,' the signification of the word 'Ṛk' in the latter is sublated by that of the word 'Veda' in the former, and the 'loudness' becomes connected with the *three Vedas*, and not with the mantras of the Ṛg Veda only.—If what is said in one text is beset with more difficulties than what occurs in another, then

the former is to be rejected; *e.g.*, one text lays down that a man who accepts the gift of horses should perform as many sacrifices as the horses he receives; while another speaks of Prajāpati having given a horse to Varuṇa and performed a sacrifice to this deity;—by which the *giver* and not the *receiver*, is to perform the sacrifice;—now if we accept the former, *i.e.*, if we accept the view that the sacrifice is to be performed by the *receiver* of the gift, then we shall have the following difficulties in the construing of the latter text: (1) it will be necessary to take the Dative in '*Varuṇāya*' ('*to* Varuṇa') as standing for the Ablative ('*from* Varuṇa'), and (2) to take the verb 'given' as standing for 'accepted'; while on the other hand, if we accept the latter text, according to which the sacrifice is to be performed by the giver of the horse, then the only difficulty involved in the construing of the former text is to take the verb 'accept' as standing for 'give'; and hence it is the former text that is rejected, and the conclusion is that the *giver* of a horse is to offer the sacrifice. Where one thing is enjoined in connection with a particular Veda, this is given preference over what would apply to that same in accordance with what has been prescribed in connection with another Veda; *e.g.*, in connection with the Yajurveda we have the injunction that its mantras are to be recited *in an undertone*; in accordance with this rule one may be led to think that the chanting of the *Vāravantīya* (a certain yajuṣ text set to the music of the particular *sāman*) is to be done in an undertone; but this is precluded by the 'high pitch' that has been enjoined in connection with the chanting of the *sāman*. What is enjoined in regard to the particular 'Vedic Recensional School' to which the performer's family belongs is given preference over what may have been enjoined in connection with another school.—The general law is superseded by the particular, and so on.

In the case of Smṛtis also,—the 'orthodox' Smṛti sets aside the 'heterodox';—among the 'orthodox' smṛtis also, if a certain course of action is sanctioned by one, but condemned by another, the latter sets aside the former, and the action in question is to be avoided. What is laid down in reference to imperceptible transcendental effects sets aside what is enjoined for temporal or worldly ends; *e.g.*, the law prohibiting the killing of the Brāhmaṇa sets aside the law that 'one may

kill a person who is threatening to kill'; as the latter course of action is meant only to serve the perceptible purpose of saving one's life. The Smṛti that is based upon a Vedic *Arthavāda* is set aside by that which is based upon a Vedic injunction; *e.g.*, the law sanctioning the killing of the cow in honour of an honoured guest,—being based upon an *Arthavāda* passage commendatory of the 'churning' or 'rubbing' of sticks,—is set aside by that which prohibits the said killing,—this latter being based upon the Vedic injunctive passage—'Kill not Aditi, the hornless cow.'

Among 'Custom,' 'Self-satisfaction' and 'Well-considered vow,'—the preceding is more authoritative than the following, as declared by the *Mitākṣarā*.

In some cases what is sanctioned by higher authority is rejected by what is ordained by a lower authority; *e.g.*, the drinking of wine (at the *Sautrāmaṇi* sacrifice), even though enjoined by the *Veda*, is not considered right, in view of its prohibition during *Kali Yuga* contained in the *Smṛti*.

Any *Smṛti* that goes against the ordinances of Manu is to be rejected—as declared by *Bṛhaspati* (see above). This is the view of the *Kalpataru* also.—Customs, local, tribal as well as family, are to be rejected if repugnant to the Veda or the Smṛti or the Purāṇa.

As between *Shruti* and *Smṛti*, the conclusion arrived at is thus expressed by Vyāsa—'That law which is deduced from the Veda is the *higher*, while that declared in the Purāṇa and other Smṛtis is the *lower*'; which means that in cases of conflict our first duty is to do what is laid down in the Veda, and the doing of what is declared in the Smṛti can be justified only as a substitute, *i.e.*, to be adopted only when there is no possibility of the other being adopted. And this for the simple reason that according to Manu (11. 30), if one follows the 'second best' course when the best course is possible, his action becomes futile; so that the conclusion indicated by this is that even in cases of conflict the *Smṛti* does not entirely lose its authoritative character; all that happens is that the course of action sanctioned by it is rendered fruitless by reason of the superiority of authority attaching to the *Vedic* text to the contrary.

The variability of the Law is unfeignedly declared by Parāshara in I. 22 :—

'The Law or the Right is one in the *Kṛta* Cycle, different in the *Tretā* Cycle, yet different in the *Dvāpara* Cycle and yet different in the *Kali* Cycle,—varying as it does, with the character of the Time-Cycles.'

On this Mādhava makes the following observations :—

The 'difference' spoken of here is, not of the *nature* or *essence*, of the Law or Right, but of its *modes*. If it were the former, then it would imply a corresponding diversity in the *Veda* also, as the source of that Law; while as a matter of fact, the Veda does *not* vary with the time-cycles. As regards the *modes* however, we have several instances of diversity: for instance, though the act of the *Agnihotra*-offering itself is the same, yet there is diversity in regard to the *mode* of performing it according as it is performed in the morning or in the evening. For instance, at the evening-performance the sprinkling is to be done with the *mantra* '*Ṛtantvā satyena pariṣiñchāmi*,' while that at the morning-performance with the *mantra* '*Satyantvā ṛtena pariṣiñchāmi*.' Thus in the present instance also, 'the variation' *lies* in the *mode* of doing what is 'right,' and not in what *is* 'right' itself; the variations being due to the nature of the time-cycle and of the capacity of the man doing the acts. This matter has been fully discussed in the Mīmāṁsā Sūtra VI. 3, where the conclusion arrived at is that in the case of the *Agnihotra* and such other obligatory rites, only those prescribed details have to be performed which it is within the capacity of the performer to perform. Baudhāyana also has declared that the obligatory acts are to be performed to the extent that one can; they should, on no account, be entirely omitted.

The most important instance of variation is cited by Parāshara (1. 23) himself—"In the *Kṛta* Cycle, *Austerity* is the highest *Dharma* or Duty;—in the *Trētā*, *Learning*;—in the *Dvāpara*, *Sacrifice*,—and in the *Kali*, *Charity*." To the last Bṛhaspati adds 'sympathy and self-control.'

There is variation, according to Parāshara (1. 24), not only, in Law, but also in the authority :—'During the *Kṛta*, the Laws are those ordained by *Manu*,—during the *Trētā*, those

ordained by *Gautama*,—during the *Dvāpara*, those ordain by *Shaṅkha-Likhita*,—and during the *Kali*, those ordained b *Parāshara*.'

The distinction however has never been observed in actu practice; as even up to this present time, the work of Mar holds the highest position among the Smṛtis.

CONCLUSION

From the above we conclude that all the authorities a agreed on the following points—(*a*) The Veda is the first an paramount authority; (*b*) the Smṛti is authoritative only in far as it is not repugnant to the Veda, to which it owes its auth rity; and only on matters on which we have no paramount a thority; (*c*) Practices or Customs are trustworthy guides, on as they are current among the 'cultured,' and then too on those that are not repugnant to Vedic or Smṛti texts; (*d*) th judgment of the 'Assembly' of the learned is to be accept as authoritative only when it is not repugnant to th Veda, and only when the judgment is 'unbiassed' by improp feelings. There is not a single text, or 'explanation,' whi favours the opinion that Custom is to override original tex —an opinion that has been upheld by the Privy Council, an endorsed by eminent writers on Anglo-Hindu Law. Neith Vijñāneshvara (*Mitākṣarā*) nor Jīmūtavāhana (*Dharmaratn* nor Nīlakaṇṭha (*Mayūkha*) countenances any such view; an these three are regarded by our lawyers as the founders the principal 'Schools of Law.'

We have purposely avoided references to, or review o the opinions held by modern scholars, as our purpose is present before the reader the views that have been held b the older indigenous scholars in as accurate a form possible. This is the reason also why we have added ve little by way of any comments of our own.

CHAPTER III

JUDICIAL PROCEDURE

Section I

(A) COURT

1. The Court is that where the Brāhmaṇa-Judge, appointed by the King, presides, assisted by three Brāhmaṇa-Assessors.—(Manu 8. 11.)

NOTES

Three righteous persons (constituting a Court) shall sit (*a*) at each provincial boundary, (*b*) at the head-quarters of districts of ten villages, four hundred villages and eight hundred villages.—(*Arthashāstra* 3.)

Details about the qualifications of the 'Judge' and the 'Assessors' will follow later on.

2. The Court-house shall be built within the Fort; it shall stand by itself, to the East of the Palace, facing the East; it shall be furnished with seats, garlands and incense, seeds and jewels, images of the gods of writing; food and water.—(Bṛhaspati in *Parāsharamādhava* p. 17.)

NOTES

This house is called 'Court of Justice' because it is here that cases are investigated and justice administered.

3. The King shall enter the Court in the morning, after having performed his daily duties, and honoured his Preceptor, Astrologers, Physicians, Gods, Brāhmaṇas and Pr ests, with flowers and ornaments.—(Kātyāyana in *Parāsharamādhava* p. 17.)

4. The exact time for holding the Court is between 7-30 a.m. to 12 noon.

5. No Court shall be held on the 8th, 14th, 15th, 23rd and 30th days of the month.

6. Courts are of four kinds: (1) The Chief or Central Court (described above), (2) the Moot Court, held in circuit,

in different villages, (3) Court presided over by the Judge and (4) the Court presided over by the King.—(*Parāshara-mādhava* p. 18.)

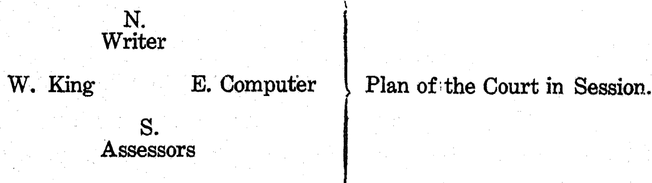
7. Apart from these Royal Courts, there are also what may be called Communistic Courts : (1) disputes among foresters being settled by foresters, (2) those among merchants, by merchants, (3) those among soldiers by soldiers, (4) those among villagers and foresters by inhabitants of both places.—(Bhṛgu.)

8. The following are the ten constituents of the Court :—

(1) King, (2) Judge, (3) Assessors, (4) Smṛti or Proclaimer, (5) Computer, (6) Writer, (7) Gold, (8) Fire, (9) Water, and (10) Bailiff.

9. In the Court, the King shall sit facing the East, the Assessors shall face the North, the Computer shall face the West and the Writer the South.

NOTES



I. KING

10. The King is the Controller.—(Bṛhaspati.)

11. Desirous of investigating cases, the King shall enter the Court, with a dignified demeanour, along with Brāhmaṇas and Councillors, versed in counsel.—(Manu 8. 1.)

NOTES

On this Medhātithi remarks that the Brāhmaṇas invited to the Court should be such as are 'versed in counsel.'

In regard to the duties of the King, Medhātithi remarks that he himself should try all criminal cases involving the inflicting of penalties. As regards cases in general, he mentions the following authorities in the descending order of importance—(1) the King, (2) the persons appointed by the King (*i.e.*, the Judge with the three Assessors), (3) Tribes, (4) Guilds and Families,—quoting Nārada (1.8). He goes on to make the distinction that "The King's

business extends up to the inflicting of punishments, while that of the others only up to the pronouncing of the judgment." To the four just mentioned, Bhṛgu, quoted by *Parāsharamādhava* p. 19, adds 'villagers and citizens.'

II. PRāDVIVāKA—Judge

12. If, under pressure of more important business, the King is unable to try the suits himself, he shall appoint a Judge to try them, with the help of the Assessors.—They should be persons fully conversant with the Law.—(Yājñavalkya 2.3.)

NOTES.

According to others, even when he is trying the suits himself, the King shall have the Judge there to advise him. In this case, however, the functions of the Judge are purely advisory.

13. The Judge is the person who is to *put questions* (*pṛchchhati*) to the parties and the witnesses *in a dispute* (and as such is called '*prāḍ*'), and who delivers the introductory address and discusses the issues involved (and as such is called '*vivāka*').—Hence he is called the '*Prāḍvivāka.*'—(Nārada.)

14. The Judge should be conversant with the legal procedure bearing upon all the eighteen Heads of Dispute, well-versed in Logic and other sciences, learned in the Veda and the Smṛtis.—(Nārada.) He shall be free from harshness, sweet-tempered, possessed of hereditary aptitude, clever, courageous, and free from greed.—(Smṛtyantara in *Parāsharamādhava* p. 22).

NOTES

This is quoted by Medhātithi under Manu (8.9), where the appointing of the Judge is laid down. Medhātithi adds that the Judge should know the Science of Morality also, which shall save him from undue influences.

15. While the suit is pending, the Judge shall hold no private conversation with the parties ; if he does so, he shall be fined.—(Kātyāyana.)

III. ASSESSORS

16. The number of Assessors shall be 3, 5 or 7. —(Bṛhaspati.)

NOTE

Manu (8.10) mentions only 3, which according to Medhātithi is the minimum.

17. No one shall be appointed Assessor who is not conversant with the customs of the place, who is an unbeliever, or devoid of learning, or avaricious.

18. The Assessors are to investigate the cases.—(Bṛhaspati.)

19. Assessors are to be appointed by the King; no one can sit in the Court as a matter of right. They should be 'endowed with learning, both religious and secular,'—the former consisting in the knowledge of the Veda and its subsidiaries,—'well versed in Law, and truthful' (*i.e.*, absolutely free from love and hatred, and as such capable of offering unprejudiced advice to the King).—(Manu 8.10, Yājña. 2.2.)

20. These Assessors should be Brāhmaṇas; but in the event of no Brāhmaṇas with the requisite qualifications being available, the King may appoint Kṣattriyas; and in the absence of these latter, Vaishyas may be appointed. But they should all possess the above-mentioned qualifications.—(Kātyāyana in *Parāsharamādhava* p. 22.)

21. The law may be propounded to the King by the Brāhmaṇa,—never by the Shūdra.—(Manu 8.20.)

NOTES

This, according to Medhātithi, means that 'even though a Shūdra might learn bits of Law and become a councillor or an officer for inflicting punishments, he shall not pronounce any opinion on the merits of cases investigated in the Court.'—According to some people, if no Brāhmaṇas are available, Kṣattriyas or Vaishyas may be appointed,—but never a Shūdra.

The Brāhmaṇa Assessors come in only as *advisers*, not as actual administrators of justice—says Vishvarūpa (on Yājña. 2.1). The administrator is the King himself; or, in his absence, the Judge (see below).

22. If the Assessors allow themselves to be swayed by covetousness or by passions or by fear or similar influences, and thereby do what is against law, each of them shall be fined—the amount of the fine to be double the amount involved in the suit.—(Yājña. 2.4.)

NOTES

This penalty of fine has been prescribed only in connection with suits regarding property; in the matter of suits relating to assault and other causes, there are other penalties; for instance, Viṣṇu lays down 'confiscation of the entire property' as a punishment for taking bribe.—If the assessor fails to understand the issues he should not say anything; if he does pronounce any opinion without duly understanding the case, he should be fined double the amount involved.

According to Vishvarūpa, for the above delinquency, the King or his representative, the Judge, is to be fined double the amount of fine inflicted on the Assessors.

23. The Assessors shall not converse, in private, with the parties; if they do, they shall be fined.—(Kātyāyana.)

IV. SMṚTI—Proclaimer, Herald

24. The Smṛti or Herald shall proclaim the judgment of the Court, and announce its decrees and penalties.—(Bṛhaspati in Vīra. p. 42.)

V. COMPUTER

25. The Computer is to compute the exact amount of the claims.—(Bṛhaspati.)

26. He should be well-versed in Grammar, Lexicography and Accountancy, honest and conversant with several scripts (Bṛhaspati quoted by Mādhava p. 23);—he should know Mathematics, Astronomy and Astrology.

VI. WRITER

27. The Writer shall write down the judgments delivered (Bṛhaspati); he should write legibly, should know Grammar, be truthful and of even temper.

VII-VIII. FIRE AND GOLD

28. Fire and Gold shall be kept in Court for the purpose of ordeals.

IX. WATER

29. Water shall be kept in Court for refreshment.

X. BAILIFF—Sādhyapāla

30. The Bailiff should be appointed by the King; he should be a Shūdra; he is to be subordinate to the Assessors.—(Vyāsa.)

31. The Bailiff is to summon and watch the Plaintiff, the Defendant and the witnesses.—(Bṛhaspati.)

PARIṢAD—Assembly

32. The King shall also convene an assembly consisting of merchants of high families, of good character, advanced in age and wealthy;—they are to be present for watching the proceedings.—(Kātyāyana.)

(B) WHAT IS 'VYAVAHĀRA'—'SUIT'—'CASE'?

33. When a man wrongly harassed by another, prefers a complaint to the King or to the Judge, this is the 'institution of the suit.'—(Yājña. 2.5.)

NOTES

The institution of a suit consists in the 'asserting of one's claim as against another person; *e.g.*, when one man asserts 'this is my holding,' while another says 'it is mine.' It consists in the instituting of the entire set of proceedings consisting in (1) the Claim (Plaint), (2) the Answer (Rejoinder), (3) the Framing of Issues, (4) Arguments, (5) Investigation, (6) Evidence and (7) Judgment and Motive or Purpose (Mitākṣarā p. 227).

According to Yājñavalkya (2.8) himself and the Aparārka (p. 595) the 'suit' to be investigated by the King should be regarded as consisting only of the Claim, Answer, Evidence and Judgment;—the factor of Judgment is what, consisting of the action of the Court itself, cannot be regarded as a subject of investigation. It concludes that the action of the two parties alone is to be understood as the 'suit.' But it adds that as the Judgment also is something that has to be duly *examined* before pronouncement, there can be no objection to regarding that also as a constituent factor of the Suit itself.

The term 'vyavahāra' (suit) denotes, both by convention and etymology, the dispute between a plaintiff and a defendant, ending in a definite decision. The conventional connotation of the term has been thus explained by Kātyāyana:

"When, on the decline of righteousness, there arises, between two parties a dispute for the due ascertainment of their claims over a certain property,—such dispute is called *vyavahāra*, case."

In fact there would be no cases if all men were righteous. Bṛhaspati goes a step further and declares that cases always arise from either Hate or Avarice.

The etymological meaning of the word '*vyavahāra*' has been explained by Kātyāyana: 'Vi' is various, 'ava' is doubt and 'hāra' is setting aside; so that, '*vyavahāra*' consists in the *setting aside of various doubts* (Parāshara-mādhava—Vyavahāra pp. 7—9).

Medhātithi on Manu (8.1).—The name '*vyavahāra*' is given to that action of the Plaintiff and the Defendant which they have recourse to for the purpose of reclaiming their rights; or it may stand for the non-payment of debts and such other matters themselves.

34. The Claim is of two kinds—(*a*) resting on suspicion and (*b*) resting on facts; it is said to rest on suspicion when the defendant is a person known to associate with bad characters; and it is said to rest on facts, when the stolen property is actually produced.—Claim resting on facts is again of two kinds—(1) *negative*,—when the plaintiff asserts 'this man borrowed gold from me, which he is not repaying,' and (2) *affirmative*,—when the charge is in the form 'he is taking wrongful possession of my lands.'—(Mitā. p. 241.) The more detailed division is under the Eighteen *Heads of Dispute*—Non-payment of Debt, Deposits, Concerns among Partners, Non-delivery of Gifts, Breach of Contract, Non-payment of

Wages, Sale without Ownership, Rescission of Sale and Purchase, Dispute between Owner and Keeper, Boundary Disputes, Defamation, Assault, Theft, Violence, Adultery, Duties of Man and Wife, Inheritance, Gambling and Betting.—(Manu 8.4-7). There are again 108 subdivisions of these.—(*Vide* Nārada I.21).

35. Neither the King himself, nor any servant of his, shall promote a suit.—(Manu 8.43.)

NOTES

This has been explained by Medhātithi to mean that the King shall not cause a suit to be instituted. He cites another explanation, according to which 'even though the King may be in a position to get at the offender directly, he himself shall not move in the matter until the offender has been brought before him by the person against whom the offence has been committed, in a regular suit; because it is only after the defendant has been defeated in the regular suit that it is time for the King to inflict the legal punishment.' But this applies only to civil suits regarding debts and such matters; against thieves and criminals the King shall proceed on his own initiative. There shall be no trial of a suit except when a complaint is received.—(Aparārka 605.)

36. The King shall not suppress a suit that has been brought up.—(Manu 8.43.)

37. The following offences are 'cognisable' by the King himself, on his own initiative: Highway robbery, interference with collection of revenue, trespassing over ramparts of the fort, destruction of drinking-fountains, arson, filling up of protective ditches, betraying of state-secrets, unauthorised entrance into the King's harem, sleeping apartments, treasury and kitchen, dressing more richly than the King and such other personal affront to the King (Pitāmaha in Vīramitrodaya p. 49) ;—Disobedience of the King's orders, killing a woman, adultery, theft, unspeakable abuse, abortion, abduction of girls, murder of Brāhmaṇa, cow-killing, destroying of standing crops.—(Saṁvarta, Nārada in Vīra. p. 51.)

NOTES

As the King may not himself be able to detect such crimes he is to employ (*a*) Detectives and (*b*) Spies.

The 'Detective' (*Stobhaka*) is one who, in expectation of reward, traces crimes and reports them to the King, and the 'Spy' (*Sūchaka*) is one who is appointed by the King to find out the delinquencies of other people.—(Kātyāyana in Vīra. p. 51.)

The *Skobhaka* is the private professional detective and the *Sūchaka*, the police detective.

(C) PROCEDURE

Preliminary Rules

38. The claim shall be preferred by the plaintiff of his own accord, and not at the instigation of the King or his officers. –(Manu 8. 43.)

39. After the plaintiff has preferred his claim, he shall be questioned–by the Judge or the Bailiff (Bṛhaspati) regarding the details of his complaint–who has harmed you ?–in what manner ?–for what reason ? –(Kātyāyana.)

40. If, on being questioned, the man remains silent, the case shall not be proceeded with. –(*Parāsharamādhava* p. 42.)

41. If the man enter the court, accompanied by friends, and answer in an arrogant or disrespectful manner,–he shall be fined.–(Ushanas.)

42. As a rule, the plaintiff shall appear in person. (*a*) But in some cases only, authorised representatives of the parties are allowed to appear. –(Kātyāyana.) (*b*) But the father, mother, or friend or relative may prefer the claim on behalf of the plaintiff, even without due authorisation.–(Pitāmaha.) (*c*) Persons other than these, coming to speak for the plaintiff, shall be fined.–(Nārada in *Parāsharamādhava* p. 42.)

43. If the plaintiff is too shy to state his case verbally, he should be given some time to recover himself–the time allowed being 3 to 7 days. – (Kātyāyana in *Parāsharamādhava* p. 51.)

44. The King or the Judge shall consult the members of the Court and then issue the summons for the defendant, – handing over the summons either to the plaintiff or to one of his own officers.–(Kātyāyana in *Aparārka* p. 605.)

45. He shall not summon one who is either too ill to attend, or a minor, or too old, or in difficulties, or engaged in religious acts, or unable to attend without detriment to a more important business, or in mourning, or engaged in state-business, or busy with festivals, or drunk, or suffering from epilepsy, or insane. –(Hārīta in *Parāsharamādhava* p. 39.)

46. These latter also may be brought to the Court in due time on conveyances provided by the Court, if the nature of the case requires their presence. – (Nārada in *Aparārka* p. 607.)

47. But if the defendant's disabilities are such as will continue for a long time, then he shall depute some one to

represent himself ;—and in cases against a young woman of respectability, or one in confinement, or of the Brāhmaṇn caste, the King shall summon her relatives; but this concession does not extend to women who are not respectable.—(Bṛhaspati in *Aparārka* p. 606.)

48. The person summoned must attend in person to answer the charge. (*a*) But the 'incapable' may be represented by his father, or son or brother or a qualified servant. (*b*) This concession is extended to such women as are either young, or in confinement, or belong to respectable families, or to the Brāhmaṇa caste ; but not to such women as are either their own mistresses, or independent or courtesans or outcastes.—(Kātyāyana.) This same exclusion from concession applies also to the wives of shepherds, wine-sellers and others of that class.—(*Aparārka* p. 606.)

49. When the defendant, being summoned, refuses to proceed to the Court, he shall be put under 'restraint' by the plaintiff.—(Nārada in *Aparārka* p. 607.)

NOTES

That is, he should be prevented from taking food or doing such other necessary things ; but an exception is to be made in favour of persons who may be physically unfit.

50. The methods of 'restraint' are as follows :—(1) The man may not be allowed to remain in the house (or he may be prevented from going out of a prescribed limit), (2) he may be prevented from taking any food for a day or so, (3) he may be prevented from going on a contemplated journey, and (4) he may be prevented from carrying on business or performing necessary duties.—(Nārada in *Aparārka* p. 607.)

51. One who transgresses the 'restraint' put upon him, shall be fined. So also if he disobeys the summons through arrogance.—(Nārada and Kātyāyana in *Aparārka* p. 607.)

52. But if there are cogent reasons for the man's non-attendance, such as the invasion of the country, famine, or sickness—he shall not be fined, he shall be summoned again.—(Vyāsa in *Parāsharamādhava* p. 41.)

53. If the plaintiff has recourse to improper methods of restraint—such as preventing the man from paying the calls of nature and so forth,—he shall be punished.—(Bṛhaspati in *Aparārka* p. 606.)

54. Persons who have climbed a hill or a tree, or are travelling on carts or boats, or riding a horse or elephant, —shall not be put under restraint.—(Nārada in *Aparārka* p. 606.)

55. The cultivator shall not be put under restraint during the sowing season, nor until he has harvested and garnered the crops ;—nor one who is about to marry, or very ill, or going to perform a sacrifice, or who has already been sued by another person, or one who is working for the state ; nor soldiers during a war, nor a minor.—(Nārada in *Aparārka* p. 607.)

56. These persons are also not to be summoned.—(*Ibid.*)

57. If the person put under restraint fails to present himself before the Court, he is to be summoned by the King. (*a*) But before summoning the defendant, the Court shall take from the plaintiff a surety, who will undertake to produce the latter when the defendant turns up.—(Nārada in *Aparārka* p. 607.)

58. The officer carrying the summons shall have his fooding and allowances paid by the person summoned.—(Kātyāyana in *Aparārka* p. 607.)

(D) TRIAL

59. When in answer to the summons, the defendant has appeared in Court, he shall be kept in a guarded place.—(Kātyāyana in *Aparārka* p. 608.)

60. The Judge and the Court shall—before the case is decided (Aparārka)—[in cases where a summary trial and judgment are not possible, according to Vishvarūpa]—take sureties for both the plaintiff and the defendant; (*a*) the surety should be one who is able to meet the liabilities under dispute, *e.g.*, the amount of debt involved, or the amount of fine likely to be inflicted and so forth.—(Yājña. 2.10 b.)

61. If no sureties be forthcoming, officers should be appointed to watch the parties; the wages of these officers being paid daily by the parties concerned.—(Kātyāyana in *Aparārka* p. 618.)

NOTES

According to the Aparārka, these wages are to be realised subsequently from the defeated party.

The taking of sureties is necessary, because the law is that if the defendant denies the claim set up by the plaintiff—and the latter succeeds in sub-

stantiatinghis claim, by means of oral and documentary evidence, then the defendant has to pay the amount of the claim to the plaintiff, and also an equal amount as fine, for false denial, to the King. On the other hand, if the plaintiff fails to substantiate his claim, he becomes a false claimant, and thus liable to apay to the King a fine which is the double of the amount claimed.—(Yājña. 11.)

The same rule holds also in cases where the defendant's answer takes the form of 'Confutation,' or of 'Citing of Previous Decision.' In this case the plaintiff becomes the 'denier,' and hence, if he is made to admit the contention of the defendant, he becomes liable to pay a fine equal to the amount of his claim. If, on the other hand, the defendant is unable to establish either the 'Previous Decision' or the 'Confutation,' then he becomes the 'false claimant,' and as such, liable to pay to the King a fine double the amount of the claim, and to the plaintiff, the full amount of the claim.

In a case where the answer of the defendant has admitted the claim, there is no fine.

Though these rules are directly applicable to cases of Recovery of Debt, yet they may be applied to cases dealing with the other Heads of Dispute also. If the plaintiff fails to prove the charge he has brought against the defendant then, being a false accuser, he shall pay a fine which should be the double of what the defendant, if proved guilty, would have had to pay. If, on the other hand, the defendant denies the charge, and the plaintiff establishes it against him, he shall pay to the King the fine prescribed as penalty for the offence.

Similarly in cases of 'Confutation' and 'Citing of Previous Decision.'

62. If the surety fails to produce the party he stands surety for, he shall pay the amount of the claim; but the son of the surety shall not be liable for this payment, if the surety had stood for appearance only; but if the surety had stood for payment, then his heirs can be made liable.—(Manu 8. 158—160.)

63. The following persons are not admissible as sureties:—

The master, a known enemy, a person deputed by the master, a disloyal person, one who has himself been fined, one who is himself under trial, state-servants, ascetics, one who is unable to pay the claim or the fines, one who is not known to the Court.—(Kātyāyana.)

64. If a party fails to offer the requisite surety, he should be kept under guard; the wages of the guard being paid by him at the end of each day. Shūdras should be kept in chains. But when so guarded, the man shall not be kept from his obligatory duties.—(Kātyāyana.)

65. Suits are to be tried in the order of the castes of the plaintiffs, the Brāhmaṇa's suit should be heard first, and so on.—(Manu 8. 24.)

66. Where the suits filed are not of equal importance, they have to be taken in the order of their importance.—(Medhātithi.)

67. Until the charge against the defendant himself has been disposed of, he shall not bring a counter-charge against the plaintiff.—(Yājña. 2·9.)

NOTES

This prohibition however does not apply to the answer in the form of Confutation; though this also involves a sort of counter-charge, yet it is more in the nature of answering a charge than in that of a counter-charge.

68. If there is a counter-charge, the complaint should be made *after* the charge first brought against the man has been dealt with.—(Yājña. 2·9.)

69. No fresh complaint should be lodged against a person who has already been charged by another person and is still under trial.—(Yājña. 2.9.)

70. In the written plaint, the plaintiff should not alter the nature of the claim originally lodged orally.—(Yājña. 2.9.)

NOTES

For example, If on the former occasion he has complained that 'the man is not paying up the hundred rupees that he had borrowed,'—this should not be altered, in the written plaint, into the form that 'he took 100 rupees from me by force.'

N rada says—'The plaintiff who renounces the ground of charge previously made and takes up another is to be regarded as a *person* of lost cause.'

According to the Apar rka what is prohibited is a subsequent statement which is inconsistent with, or contradictory to, what has been said before.

According to the *Mitākṣara*, in civil suits the prohibitions here set forth do not affect the main issue of the case. They only interdict certain contingencies which are undesirable, in the sense that they render the person concerned liable to punishment. But in criminal cases, the said contingencies also affect the main issue, and make the man liable to lose his case. For instance, if the first report has been in the form 'I have been struck by the defendant by his feet in my hand,' and in the written charge he says 'I was struck by hand in my legs,' he is not only to be fined for this prevarication but also liable to have his main case dismissed.

71. *Counter-charge* is permissible in cases of Abuse, Assault and Violence.—(Yājña. 2.10 a.)

NOTES

In such cases, the defendant may make a counter-charge, even before he has answered the charge brought against himself. And such counter-charge is made, not for the purpose of starting simultaneous cases, but only for that of

having his own punishment reduced. For example, a man who has been charged with assault, may urge, in extenuation, that the complainant had struck him first; and if he succeeds in proving this, the punishment inflicted upon him would be lighter than what it would have otherwise been. In fact, the same penalty is inflicted on both parties; though according to N rada, the man who committed the assault first deserves heavier punishment than the one who only retaliates.—(*Mitākṣarā.*)

In the event of a counter-charge, that party should be heard first whose grievance is the more serious.

72. Very serious charges of violence, theft, assault and defamation, and also of hurting or killing the cow and such other cattle, and those relating to women [those *against* women according to Vishvarūpa] should be heard immediately; and the defendant should be made to answer the charge at once.—(Yājña. 2.12.)

NOTES

In other cases, if the latter asks for time, this may be granted and another day fixed for the hearing; the grounds for such request have been described by Bṛhaspati as extreme shyness and fear. K tyāyana lays down detailed rules as under:—

73. If the act complained of has been committed on the same day, the case should be heard on that very day; if the occurrence took place a year before, the hearing may be postponed for a day; on the lapse of six years, it may be postponed for three days; after twelve years, for seven days; after twenty years, for 10 or 15 days; after 30 years, for one month.—(Kātyāyana.)

NOTES

But discretion is given to the Court, to be exercised in view of the merit of each case.—(*Aparārka* p. 619.)

If the case is a difficult one and the Court finds it necessary to devote more attention to it, it may itself postpone the hearing.—(*Ibid.*)

NON-SUITING WITHOUT HEARING

74. If a creditor tries to realise the debt, not admitted by the debtor,—without seeking to prove his claim in a court of law—by arrresting him, or by some other forcible means, he shall have his claim dismissed and also be fined.—(Yājña. 2. 16.)

NOTES

This means according to M dhava (p. 58), that the man can never revive his claim.

75. If a debtor should run away without paying the debt which has been admitted by him, or which has been proved in a court of law,—he also loses the case and shall be fined. —(Yājña. 2. 16.)

76. On being summoned by the King, if the accused declines to make any statement in Court, he also loses the case and shall also be fined.—(Yājña. 2. 16.)

77. On being questioned, if the man mentions a wrong place (as one where the transaction took place), or retracts a previous statement, or makes mutually contradictory allegations, or fails to support an allegation, or prevaricates,—or secretly converses with a witness, or shirks investigation,—or, on being questioned, remains silent,—such a person fails in his suit.—(Manu 8. 53—60.)

NOTES

Medhātithi—After the plaint has been duly explained to the defendant, and on being questioned about it,—the latter is unable to answer any questions, he should be 'non-suited.' The time within which the defendant must submit his answer is 45 days. But the plaintiff should answer questions relating to his plaint, on the same day; if he fails to do so, he shall be imprisoned and fined.

78. On being asked to name his witnesses, if the party fails to name them, he shall be non-suited.—(Manu 8. 57.)

79. (1) Having made one statement, if he subsequently makes a totally different one;—or if he says to the defendant 'I have not filed a suit against you';—(2) if he shows disrespect towards the Assessors or the witnesses;—(3) if on being summoned, he fails to appear;—(4) if he fails to put in the Rejoinder;—or (5) if he absconds after being summoned,—he shall be non-suited.—(Nārada in *Parāsharamādhava*, p. 64.)

80. The party is 'defeated' (1) if he, on being summoned, absconds, or (2) remains silent, or (3) is refuted by evidence, or (4) himself admits the claim.—The absconder is to be 'defeated' after a fortnight; the man who gives no answer, after seven days, and the other two, at the time of the hearing.—(Bṛhaspati in *Parāsharamādhava* p. 64.)

NOTES

But if these delinquencies are found to be due to circumstances beyond the man's control, he shall not suffer for them.—(*Mādhava* p. 64.)

81. If the plaintiff, after having made one statement, subsequently retracts it and makes another,—if he fails to bear

in mind, in making further statements, what he has said before,—if, even though the statement of the other party is apparently such as he cannot admit, yet he remains silent and does not proceed to confute it;—having said that he can produce a number of witnesses, if he fails to produce them when called upon to do so,—or if he produces fewer witnesses, or such as are not admissible;—if having named one witness, he actually produces another;—if, in course of the deposition of the witness produced by himself, the plaintiff says, 'What he is saying is not true;—if he converses with the witnesses at an improper place,—he shall be non-suited.—(Arthashāstra 3. 1.)

82. In cases of non-suiting after the deposition of the witnesses the plaintiff is to be fined the fifth part of the amount claimed by him.—When the man is non-suited after his own statement, he shall pay as fine the tenth part of the amount claimed by him.—The non-suited plaintiff shall also pay the eighth part of the wages payable to the judges; also the travelling and fooding expenses incurred, are to be paid in cash, computed according to the price of the conveyances and food-stuffs involved.—(Arthashāstra 3. 1.)

83. Even after the suit has been decided against the above four kinds of men, they can revive their case after payment of a fine;—the man who changes his statement paying 5 Paṇas; one who has shown disrespect to the Court, 10 Paṇas; one who does not attend, 12 Paṇas; the man who does not answer, 16 Paṇas; one who absconds on being summoned, 20 Paṇas.—(Kātyāyana in *Parāsharamādhava* p. 57.)

NOTES

The rule that a complaint cannot be revived (Kātyāyana) is meant for ordinary criminal cases, not for civil suits—(Mādhava p. 58),—specially those relating to cattle, women, land and debts, where the delinquent may be fined, but he does not lose his claim.—(Nārada.)

Hints have been provided for the Court to determine whether a deponent—plaintiff or defendant or witness—is honest or dishonest. For instance, if the man, while in Court, shows signs of his mind, speech, body or movements being affected, without any apparent cause,—he should be regarded as 'dishonest.' The following are a few of these signs:—(1) He changes his position constantly, does not stand in one place for any length of time, (2) keeps passing his tongue over the corners of his mouth,—these two being signs of his 'movements' being affected,—(3) perspiration breaks out on his forehead, (4) his face becomes pale or dark, (5) he twists his lips—these being signs of his 'body' being

affected,—(6) his speech is choked and halting, (7) he talks much and inconsistently,—these being signs of his 'speech' being affected,—(8) he fails to answer questions addressed to him, and does not look in the face of the questioner,—these are signs of his 'mind' being affected.

All these are mere indications of the possibility of dishonesty; they should not be taken as absolute proof of the man being dishonest; it being difficult to discriminate whether the signs are actually the effect of nervousness due to consciousness of guilt, or those of the man's natural nervousness in the special surroundings. The Aparārka definitely asserts that these are to be regarded only as 'auxiliary evidence,' and not such evidence as should be the sole basis for decision.

COMPOUNDING

84. If the parties come to an understanding after the preliminaries have been finished and the trial has commenced,—they should be fined double the amount of the claim.—(Bṛhaspati in Mādhava, p. 58.)

NOTES

But according to Kātyāyana, this refers to cases where the parties have deceived the King; and in cases where there is no such deception, the parties coming to an agreement are not to be fined.

In certain cases there is mutual settlement by the order of the King;—in cases where the evidence on both sides is equal, for instance.

(1) PLAINT

85. There are four factors in a case:—(1) Plaint, (2) Rejoinder, (3) Evidence and (4 Judgment. When, in answer to the summons, the defendant has presented himself, the claim should be reduced to writing, in the presence of the defendant, exactly in the form in which it had been set forth previously [*e.g.*, according to Vishvarūpa, stating the charge along with all attendant details, introductory and explanatory]; and this written claim should have the names and castes of the two parties, the substance, amount and number of the property, the year, the month, the fortnight, the day and other details duly stated therein.—(Yājña. 6.)

NOTES

The claim thus set forth in all its details is what is called '*Bhāṣā*,' '*Pratijñā*,' '*Pakṣa*,' i.e., *Plaint*. The difference between 'claim' and 'plaint' lies in the fact that when the *claim* is preferred in the first instance, it states merely the claim, while in the *plaint* it is set forth in full detail and in due form. The plaint that is not in proper form should be rejected.—(*Aparārka* p. 609.)

The insertion of the *year* is not necessary in all cases; it being essential only in cases of deposits, gifts, and sales, and also in money-lending transactions.—The names of the country and town and so forth are to be stated only in the case of immovable property. Says Kātyāyana—'Country, town, exact situation, caste of the parties, names of the parties and their neighbours, residence, documents, exact measurements, specification of the field or land, names of three ancestors of the parties, also the names of the King and his two predecessors,—these should be stated in all disputes over immovable property.'

The Aparārka adds that of the details, only those should be mentioned which have any bearing upon either the establishing or the rejecting of the claim. For instance, when the claim pertains to debts, it is necessary to mention the date in detail, for the purpose of computing the interest.

Plaints that do not fulfil the necessary conditions are to be regarded as invalid. The grounds of invalidity have been thus set forth in detail:

86. The King shall reject every plaint which is either palpably absurd or irremediable or meaningless or futile or unprovable or self-contradictory.—(Quoted in *Aparārka* p. 609.)

NOTES

'*Absurd*'—*e. g.*, 'The defendant is not returning to me the hare's horn that I had lent him.'—'*Irremediable*'—*e. g.*, 'This man takes advantage of the light emanating from the lamp in my room.'—'*The meaningless*'—*e. g.*, 'He has taken my *Abracadabra*.'—'*Futile*'—*e. g.*, 'This man relates Vedic texts in a sweet voice near my house.'—'*Unprovable*'—*e.g.*, 'Devadatta laughed at me' (in proof of which no evidence can be adduced). '*Self-contradictory*'—*e. g.*, 'I have been abused by this dumb man.' '*Viruddha*,' according to Aparārka, may mean 'what is prejudicial to the best interests of the state or the country'; this is in accordance with Kātyāyana.—(*Aparārka* p. 609.)

Among inadmissible plaints, some texts, *e. g.*, that of Kātyāyana (quoted in *Aparārka* p. 609) mention also 'one that is *anekapadasaṅkīrṇa*.' This has been taken by the Aparārka to mean that plaints have to be rejected on the ground of 'misjoinder of claims'; but the Mitākṣarā (p. 253) does not accept this view; it argues that even such plaints are admissible as 'this man has taken from me gold, silver and clothes' (where though the dispute is under one head, yet it pertains to several things),—or as 'this man has borrowed from me money on interest, I deposited gold with him, he is wresting my field from me (where the plaint refers to several heads of dispute).—What is really meant by the text in question is that whenever such a 'mixed up' plaint happens to be presented, each part of it should be dealt with and tried separately. This has been distinctly laid down by Kātyāyana. The words of Kātyāyana, quoted by Aparārka (p. 610), mean that 'the King shall admit a plaint even though it contains several assertions,' such as 'The defendant borrowed from me 100 gold-pieces in Pāṭaliputra, and then after a month at Benares he borrowed some clothes, and again after a year some grains' There is no 'misjoinder' in this case as every one of the assertions falls under the same 'head.'

87. The complaint of one man against several is inadmissible; so also is the complaint of the teacher against his pupil, or that of the father against his son, or that of the husband against the wife and *vice versa*, or that of the master against the slave and *vice versa*.—(Nārada.)

88. The following six kinds of suits shall not be entertained—(1) one relating to a secret transaction, (2) to business transacted in an inner room, (3) to business transacted at night, (4) or in forest, (5) or fraudulently, (6) or what is not known to anybody except the two parties. He who lodges or promotes such complaints shall suffer the first amercement.—But even suits relating to secret transactions may be entertained when they pertain to debts contracted on such pledges as a house, a garden and the like;—also those relating to Inheritance, Deposits (open and sealed) and Strīdhana,—or those filed by such women as cannot go out of their house, or are ill; also suits relating to such nocturnal transactions as theft, defamation and so forth;—also those relating to such transactions in the forest among merchants, herdsmen, foresters, and so forth;—also such fraudulent transactions as those by forgerers and dealers in false gold and such things;—also what is known only to the two parties, in such cases as those of love, marriages and so forth.—

89. No suits shall be entertained which are filed by those who are dependent on others, or by a person whose father is alive, or by one who has sons, or by an outcast brother, or by a younger brother not separated, or by a woman who has her husband or son living, or by a slave, or by a minor, or by a person too aged, or by persons accused of a heinous offence, or by a renunciate, or by one who is of deficient limbs, or by those too much addicted to vices;—except when these persons have given a power-of-attorney to a person.—

90. All such suits shall be entertained as are filed by the proper parties and relate to transactions at the proper time and place and supported by adequate evidence.—(Arthashāstra 3.1.)

NOTES

The Aparārkā (p. 611) adds that the complaint of one man against several is inadmissible only simultaneously; it can certainly be admitted and dealt with severally one after the other; that in the case of slaves, they should be

sued in the name of their masters;—what is said regarding the teacher and his pupil means that if the teacher has chastised the pupil according to law, no charge of criminal assault shall lie against him.

According to Vishvarūpa, the inadmissibility of suits between near relatives, such as husband and wife and so forth, is indicated by the term '*paraiḥ*' in Yājñavalkya's definition, which he explains as 'not related.'

91. (1) If only one person claims the property which belongs to several persons; (2) if the measurements of the land or the number of articles claimed, do not tally with the real state of the things concerned, the plaint is to be rejected; (3) so also if the plaint fails to mention the source from which the plaintiff acquired the thing under dispute—whether gained by learning, or acquired by purchase, or inherited; (4) if the year, the month, the fortnight, the date and the day are not entered; (5) if the plaintiff cites his witnesses before the other party has put in his rejoinder; (6) if the plaint is dubious, not definite; (7) if it is set forth in wrong order; (8) if the details of the property are described, and not the property itself; (9) if it is confused; (10) if it is futile, *i.e.*, not stating facts and proofs; (11) if it is barred by limitation; (12) if it contains a double claim, and entails the necessity of proving two propositions—the plaint is invalid.—(Nārada in *Parāsharamādhava* p. 49.)

92. The term 'party' includes also the son or the father, or some other person duly authorised by the complainant. The defeat or victory of these representatives constitutes the defeat or victory of the original complainant himself. —(Kātyāyana in *Parāsharamādhava* p. 42.)

93. What has been stated by the complainant, or his accredited agent, should be reduced to writing; first on the ground or a wooden slab; and then after having been duly revised and corrected, it should be conveyed on paper. —(Kātyāyana in *Parāsharamādhava* p. 52.) (*a*) The corrections and elucidations and also additions to the plaint can be permitted only until the Rejoinder has been submitted and seen. —(Nārada in *Parāsharamādhava* p. 52.)

94. The Court should never call for the rejoinder until the plaint has been duly revised and amended by the complainant.—(Bṛhaspati in *Parāsharamādhava* p. 53.)

95. If through some physical disability the complainant is unable to make his full statement on the spur of the

moment, he should be given some time to recover his composure.—(*Ibid.*)

96. Where the plaint is accompanied by a counter-plaint, that party should be allowed the first opportunity of stating his case who belongs to the higher caste (Bṛhaspati in Parāsharamādhava p. 46) or that man whose complaint is more serious should be allowed precedence.—(Nārada in Aparārka p. 611.)

97. Complaint is of four kinds :— (1) Suspicion, in which the defendant is only suspected of having wrongfully taken what belongs to the plaintiff ; (2) Definite charge, in which the lost property has been actually found in the possession of the defendant ; (3) Claiming of one's dues ; and (4) Appeal—request for revision of decision.—(Bṛhaspati in Parāsharamādhava p. 51.)

(2) REJOINDER—ANSWER

98. After the defendant has heard the plaint read out to him, his answer should be taken down, in the presence of the plaintiff.—(Yājña. 7 a.)

NOTES

Vishvarūpa explains that the last condition is added in order to enable the Court to come to an immediate decision, and must pertain only to suits of very urgent character. This Answer or Rejoinder should be one that (*a*) traverses the plaint, (*b*) is reasonable or firm (Aparārka), (*c*) definite, (*d*) consistent and (*e*) not couched in difficult language.—It shall not be 'too lengthy' says Hārīta.

99. In criminal cases the answer should be called immediately after the complaint ; in other cases the time for the answer may be extended, in accordance with the wish of the parties, or of the Court.—(Yājñavalkya 2. 12 ; Mitā. p. 280, also Nārada 1. 32.)

100. There are four kinds of Rejoinder—(1) Admission :— the plaintiff having urged that 'this man owes me a hundred rupees,' the defendant answers 'yes, I do owe it'; (in this case the suit ends at this second stage, says the Aparārka); (2) Denial :—may be in four forms—(*a*) 'This is not true, I do not owe anything,' (*b*) 'I do not know anything about it,' or 'I do not remember' (Aparārka), (*c*) 'I was not present at the place mentioned by the plaintiff,' (*d*) 'I was not born

at the time mentioned by the plaintiff'; (3) Confutation :— *e.g.*, the defendant admits the loan but asserts that it has been repaid; and (4) Urging a previous legal decision :— 'The claim that has been preferred against me by the plaintiff has already been disposed of by a previous decision of the Court.'

NOTES

Rejoinders not fulfilling these conditions are called 'wrong.' For example, —(1) *Indefinite or doubtful* rejoinder: the claim being in regard to 100 gold pieces, the answer is 'I did borrow but either 100 gold pieces, or only 100 *māṣa* of gold; (2) *Irrelevant:* the claim being in regard to 100 gold-pieces, the answer is 'I owe 100 copper-pieces'; (3) *Meagre:* 100 gold pieces being claimed, the answer admits five; (4) *Excessive:* 100 gold pieces being claimed, the answer admits 200; (5) *Touching a part of the claim:* gold and clothes being claimed, the answer admits the gold; (6) *Confused:* the plaint is in regard to debts, the answer refers to some other head of dispute; *e.g.*, the claim being in regard to 100 gold-pieces, the answer is 'I have been assaulted by him'; (7) *Irrelevant regarding place:* the complaint being that 'the man has wrested my field situated in Benares on the eastern side,' the answer is simply 'I have taken possession of a field'; (8) *Inexplicit:* the claim being in regard to 100 gold-pieces, the answer is 'Is it I alone who owe money?' The implication being that the judge or the complainant himself may be owing money to people; (9) *Couched in unintelligible language:* unusual words being used, *e.g.* '*arjuna*' for the Cow (Aparārka); (10) *Inconsistent:* 100 gold-pieces being claimed, the answer is—'I did borrow the money—I do not owe it'; (11) *Couched in difficult language:* the claim being that the defendant's father had borrowed 100 gold-pieces from the plaintiff, the answer is '*Gṛhītashatavachanāt suvarṇānām piturna jānāmi*,' which means 'I never heard from my father that he had borrowed a hundred gold-pieces,' but is difficult to construe; (12) *Unreasonable:* the claim being that 'the man having borrowed hundred rupees on interest, he has paid the interest, but not the principal,' the answer is 'It is true that I paid the interest but I never borrowed principal.' (Mitākṣarā, pp. 258-259.)

101. The following are the inadmissible forms of Rejoinder :—(1) *Aprasiddha*, unknown or unintelligible—when the statement is made without proper knowledge of the nature and number of articles claimed, or of the time of the alleged transaction; or when the statement is made in language not known to the Assessors; (2) *Contradictory:* having asserted 'I repaid the entire debt during my childhood,' later on it is added 'I did not pay'; (3) *Too brief*; (4) *Too diffuse*; (5) *Doubtful: i.e.*, couched in words admitting of double meaning, *e.g.*, '*mayā-deyam*' which may mean

'I should pay' (*maya deyam*) and also 'I should *not* pay' (*mayā adeyam*); (6) *Impossible: e.g.* the man being only 16 years of age, says 'this was paid by my grandson'; (7) '*Couched in difficult language*'; (8) *Irrelevant:* instead of answering the claim for the debt, the man says, 'the plaintiff has beaten me'; (9) *Defective:* if the man admits 200, when the claim is for only 100; (10) *Inexplicit*: when the words are uttered indistinctly and in a round-about manner; (11) *Confused: 'kintenaiva sadādeyam mayādeyam,'* which may mean 'Is he always to pay and I to repay,' or 'Is he always to repay' or 'Is he always to pay and I to pay'; (12) *Difficult*, requiring an explanation; and (13) *Puerile*, which has no bearing on the case.—(Kātyāyana in Parāsharamādhava pp. 57-60).

102. The Rejoinder should contain a single answer, definite and to the point,—there should not be a jumble of statements. —(Kātyāyana in Mitākṣarā p. 259.)

NOTES

That such a Rejoinder is not right is due to the fact that it confounds the issues; the plaintiff has claimed the re-payment of the loan of a 100 gold-pieces and a hundred rupees; if the defendant's answer is that 'he never borrowed the 100 gold-pieces, the 100 rupees he had borrowed but has repaid it,'—this is not right. Similarly there may be misjoinder of Confutation and Citing of Previous Decision; *e.g.* in the aforesaid claim, if the answer is that '100 gold-pieces that were borrowed by me have been already paid, as regards the claim of 100 *rupees*, this has been already disposed of by a previous law-suit,'—it will be necessary for the defendant to adduce evidence, oral or documentary, in support of the first part of his answer, and either adduce the previous decision, or prove it otherwise, in support of the second part; and this would give rise to confusion.—Similarly in cases of the misjoinder of three or more forms of answer.

These mixed Rejoinders are inadmissible only when they are taken together; but there would be no confusion if each one of the several issues raised were dealt with separately, in a definite order;—this order being determined by the wish of either the plaintiff, or the defendant, or the Court. In a case where the two parts of the Rejoinder are such that the subject-matter of one is much less than that of the other, then that which pertains to the larger amount should be taken up first; in a case where one part of the answer admits a claim and another disputes it, the latter should be dealt with first, as no investigation is needed regarding the point admitted; *e.g.*, the claim being that the man has borrowed (1) 100 gold-pieces, (2) 100 rupees and (3) clothes,—if the answer admits (1), denies (2) and in regard to (3) says that he

did take them, but had returned them. In the same case, if there is a mixture, in the Rejoinder, of 'Denial' and 'Previous Decision,' the part of the claim covered by the Denial should be taken up first.—(Mitākṣarā p. 260.)

An example of another kind of mixed Rejoinder we have in the case where the plaintiff having claimed that 'This is my cow, lost on such and suoh a date, and seen in the house of the defendant,' the answer is—'This is not true, this cow was in my house, or was born in my house, long before the day mentioned in the plaint.' This cannot be a wrong Rejoinder, as it does succeed in traversing the claim; nor is it in the form of mere *Denial*, as it contains confutory arguments also. It must therefore be regarded as a *Denial accompanied by Confutation*. In such cases the onus lies on the defendant. So also in cases of mixture of Denial and Citation of Previous Decision.—In no case should there be a commingling of issues.

Why the mixed Rejoinder is inadmissible is explained by the Aparārka (p. 613). In the case of the Rejoinder being in the form of 'Denial' the onus of proof lies on the plaintiff; while in the case of its being in the form of 'Confutation,' it lies with the defendant; so that if the Rejoinder is of a *mixed* character—partly 'denial' and partly 'confutation'—then the onus becomes divided and this confounds the issues.

103. After both parties have reduced their statements to writing, and after the commencement of the trial, if either party says anything not already contained in statement, he loses the case.—(Kātyāyana also Nārada in Parāsharamādhava p. 671.)

104. If the defendant does not put forward any answer, he should be made to do it.—(Bṛhaspati—Parāsharamādhava p. 53.)

105. If no answer can be got from him after seven days, the claim should be decreed against him.—(Kātyāyana—*Ibid.* p. 64.)

106. 45 days are to be allowed for the defendant to set forth his Rejoinder; after which, if he does not submit his Rejoinder, he shall be non-suited.—(Manu 8. 58.)

NOTES

In some cases Gautama (13. 28) allows a year; but according to Medhātithi, Gautama's rule is not, and should not, be observed in practice. His conclusion is that the Court should grant just as much time as it may consider sufficient for the party to understand the claim and prepare his answer.—This postponement, remarks Medhātithi, is not to be granted in the case of serious or criminal cases; the defendant should, in these cases, answer the charge at once, specially as serious criminal cases should be *not* compoundable; it being the duty of the King to punish all criminals.

107. The judge shall note down the following in due order. The year, session, month, fortnight, date of the complaint,—the location of the Court—the account of debt involved—the residence, caste, *gotra*, name and profession of the plaintiff and the defendant,—in their mutual relationship (of Debtor and Creditor *e.g.*,)—and also a list of questions that may be put on behalf of the two parties.—This note he shall carefully revise.—(Arthashāstra 3.1.)

108. If the Defendant is unable to put in his Rejoinder at once, he shall be allowed three or seven days to do it.—After that he shall be fined any amount between 3 and 12 *Paṇas*.—If he fails to answer within 45 days, he shall be fined the fifth part of the claim, and all his belongings shall be made over to the Plaintiff, with the exception of the implements of his livelihood.—The same punishment shall be inflicted also if the defendant runs away from the presence of the Plaintiff.—(Arthashāstra 3. 1.)

109. If, through shyness, or fear, or want of recollection, the defendant applies for time, it should be granted ;—this postponement being for 1, 3, 5, 7, 15, 30, 90, or 360 days, according to the circumstances of the case. If the matter of the complaint is such as has occurred at that very moment, the Rejoinder must be made immediately ; if after a month has elapsed since the occurrence, one day's time may be given ; if 6 years have elapsed, 3 days ; if 12 years, 7 days ; if 20 years, 10 days or 15 days ; if 30 years, a month ; after that, a month and a half ; in the case of such defendants as are either dependent on other, or idiotic, or insane or minor, or initiated, or invalid, postponement up to one year may be granted.—(Nārada in Parāsharamādhava p. 85.)

110. In cases where either the principal party or the witnesses are away in foreign lands, the hearing should be postponed till their return.—(Kātyāyana in Parāsharamādhava p. 55.)

111. Postponement is to be granted if the subject-matter of the dispute is complicated, or if there is some incapacity in the parties, or loss of memory.—(Nārada in Parāsharamādhava p. 54.)

112. In cases relating to debts, pledges and deposits and gifts and inheritance, postponement should be given.—(Pitāmaha in Parāsharamādhava p. 55.)

113. In the case of serious criminal offences,—of violence, theft, defamation and assault,—and in disputes about land, the trial should be immediate (Bṛhaspati in Parāsharamādhava pp. 55-56); also in disputes relating to cows, bulls, lands, women, sale, violating of virgins and perjury.—(Kātyāyana in Parāsharamādhava p. 56.)

114. Of *Denial*, as a form of Rejoinder, there are four varieties: (1) 'The claim is entirely false,' (2) 'I know nothing of the claim,' (3) 'I was not present at the time of the alleged transaction,' (4) 'I was not born at the time of the alleged transaction.'—(Prajāpati in Parāsharamādhava p. 57.)

(3) EVIDENCE—CITING OF PROOFS

115. Until he has cleared himself of the charge against himself, the defendant shall not put up a counter-charge against the plaintiff. Nor will a second charge be brought against a man until the first case has been disposed of.—(Yājña. 2. 9; Arthashāstra 3.1.)

116. But a counter-charge can be made in cases of Defamation, Assault and Serious Crimes.—(Yājña. 2.10a; Arthashāstra 3.1.)

117. Immediately after the Rejoinder has been put in, the Plaintiff shall state in writing the proofs in support of his claim.—(Yājña. 7.)

118. If the defendant denies the plaintiff's claim, the latter should cite his witnesses, or adduce other evidence, in the shape of documents and so forth.—(Manu 8. 52.)

119. But in a case where the Rejoinder is in the form of the Citation of a Previous Decision, the requisite proof has to be adduced by the defendant (Hārīta in Aparārkā p. 616); this proof consisting in the production of the previous decree.—(Vyāsa—*Ibid.*).

120. In the case of the Rejoinder being in the form of a Confutation, the defendant has to adduce the proof in support of his confutation.—(Hārīta in Aparārka p. 616.)

121. In a case however where the Rejoinder admits the claim, there being nothing to be *proved*, no proof has to be adduced, and the suit ends with the said admission.—(*Ibid.*)

122. The defendant, denying the claim, shall be convicted by the plaintiff producing at least three witnesses.—(Manu 8. 60.)

123. The plaintiff shall confute the Rejoinder on the same day ; if he fails to do so, he shall be non-suited.—(Arthashāstra 3. 1.)

124. 'Document,' 'possession' and 'oral evidence' are the proofs ; in the absence of *these*, 'ordeals.'—(Yājña. 2. 22.)

NOTES

Proofs are of two kinds—(A) Temporal and (B) Spiritual. Under the former are included (1) Witnesses, (2) Documents and (3) 'Anumāna,' *i.e.*, arguments or reasoning. There are 12 kinds of 'witnesses,' 8 kinds of 'documents' (Bṛhaspati). The 'Temporal' proof is stronger than the 'Spiritual'; between oral and documentary evidence, the latter is stronger ; in the matter of conditions obtaining among guilds and tribes, Documentary Evidence is the only one admissible—neither Witnesses nor Ordeals ; but oral evidence is the only evidence admissible in cases relating to payment or non-payment, disputes between master and slave, rescission of sale, gambling and violence.—(Kātyāyana in Parāsharamādhava p. 61.)

Anumāna (which means reasoning or argument) has been interpreted by Mādhava (p. 61) as *Possession*, on the ground that Yājñavalkya mentions 'bhukti' (Possession) in its stead.—But Kātyāyana has 'yukti,' 'arguments, in addition to 'bhukti,' 'possession.'—(Mādhava p. 63.)

125. Open transactions are to be proved by witnesses and secret ones by ordeals (Vyāsa in Parāsharamādhava p. 62) ; but in cases of misappropriation of deposits, and where the defendant is accused of a 'heinous' crime (*Mahāpāpa*),—even though there be witnesses—decision is to be based upon ordeals.—(Bṛhaspati in Parāsharamādhava p. 62.)

126. Ordeals also come of use where witnesses equally reliable are produced by both parties, or where the dispute involves matters of life and death (Kātyāyana in Parāsharamādhava p. 62) ; or where documentary evidence is proved to be defective or unreliable.—(*Ibid.*)

127. Documents are of *two* kinds only—Royal Edict and Deed executed by ordinary men (Vashiṣṭha in Parāsharamādhava p. 65).

128. 'Possession' is using.

129. 'Oral evidence' consists in the deposition of witnesses.

NOTES

All available authorities are agreed that ordeals are admissible as proof only when neither of the other three is available ; or, even though available, it is not sufficiently reliable. Hence, in a case where both parties come to the

Court simultaneously, and one of them bases his claim upon 'temporal' proof, while the contention of the other refers only to 'ordeals,' the claim of the former has to be accepted.—In fact, even in cases where only a part of the claim is based upon 'temporal' proof, no ordeal need be admitted. For instance, where the claim is in the form 'this man has borrowed from me a hundred rupees on interest,' and in adducing proofs the plaintiff says, 'I have witnesses to prove that he borrowed money from me, but as regards the exact amount borrowed and the rate of interest, I have no other evidence, but I appeal to ordeal,'—in this case, if the witnesses adduced are found to be reliable in support of the claim, the whole claim may be decreed, and it is not necessary to have recourse to ordeals. In fact, wherever ordeals have been prescribed, it is to be taken as governed by the qualification that recourse is to be had to them only when none of the 'temporal' proofs is available.—(Mitākṣarā on Yājña. 2. 22.)

There are restrictions also in regard to the admissibility of the *oral* and other kinds of temporal proof. For instance, (*a*) in the matter of transactions among members of the same guild or tribe, documentary evidence is the only proof admissible, and not *oral* evidence or ordeals; (*b*) in the matter of Easements,—disputes regarding door-way, right of way, drains and so forth,—weight attaches to possession only, not to ordeals or oral evidence; (*c*) in disputes relating to the non-payment of wages, non-delivery of articles sold, gambling, and so forth, oral evidence is the only proof admissible, not ordeals or documents.—(Mitākṣarā.)

Pitāmaha entirely excludes ordeals from all disputes relating to immovable property, and Kātyāyana from those relating to land, to defamation, to non-payment of wages, to non-delivery of articles sold, to gambling.—Vyāsa restricts ordeals to secret transactions alone.—Ordeals are admissible in all cases where there is conflict among equally reliable witnesses, or where a document adduced in proof is alleged to be forged.—(Aparārka.)

130. In cases where no evidence is available, the King shall exercise his own judgment.—(Pitāmaha in Parāsharamādhava p. 64.)

Detailed Rules

Order of Calling Witnesses

131. In a case where two persons file plaints simultaneously, with regard to the same property, the Court should first call the witnesses of that party the alleged date of whose possession is earlier than that of the other party.—(Yājña. 2. 17.)

Notes

E.g., when a certain plot of land has been given to a man and remained in his possession for a few years, after which he goes away to foreign lands; another person also in the meantime may have been given the same plot of land, and after having retained it for a few years he also goes away; after a few years both of them return and c im the land, and go to court over it.

132. But in a case where the plaint becomes 'subordinated' or 'eclipsed' by being admitted in the Rejoinder, the defendant's witnesses have to be called first.—(Yājña. 2. 17.)

NOTES

E. g., in the said case, if the Rejoinder is in the form of Confutation,—'It is true he got the land before me, but he sold it to the King who thereupon gave it to me,'—or that 'The man himself gave it to me before he left.'

The above is the explanation of Yājñavalkya's text by the Mitākṣarā. The Aparārka offers a different explanation. The Mitākṣarā is not quite acceptable; because it cannot be right for the author to lay down rules regarding a very special case in the very beginning. According to the Aparārka, the rule is that (*a*) in cases where both parties adduce witnesses, those of the plaintiff should be called first, and that (*b*) those of the defendant are to be called only after the plaintiff's statement has become 'subordinated.' The Aparārka goes on to explain in what cases there is a chance of witnesses being produced by both parties. There is no possibility of this in cases where the Rejoinder is a pure 'Denial,' in which case, it is only the plaintiff who is required to produce witnesses. But in cases where the Rejoinder is in the form of either 'Confutation' or 'Citation of Previous Decisions,' it is possible for witnesses to be produced by both parties. For instance, the defendant may state in his Confutation—'What I owed you I have already paid'; to which the plaintiff replies—'You did pay the amount, but that was for paying to some one else, and not for paying off the debt due to me, which I can prove by witnesses';—in this case both parties have to produce witnesses. Similarly when the Rejoinder urges 'Citation of a Previous Decision,' the plaintiff may say—'It is true that the decision cited by you went against me; but later on I got that decision reversed'; in this case also witnesses have to be produced by both parties.—In both these sets of cases it becomes necessary for both parties to produce witnesses; and (*a*) ordinarily the witnesses of the plaintiff should be called first; (*b*) but in some cases, it so happens that the plaintiff's statement becomes 'eclipsed'; when, for instance, it is admitted in the Rejoinder; *e. g.*, when the Rejoinder is 'What the plaintiff says is quite true, I did borrow the money from him; but I paid it off';—in which case the plaintiff's statement ceases to be of any significance, not calling for an investigation, having been admitted by the other party, and what becomes an object of investigation is the defendant's statement that he has repaid the debt; hence in this case the witnesses of the defendant have to be called first.

In this connection Vishvarūpa points out that, in the case just cited, it may be that the Rejoinder is answered by the plaintiff by a counter-confutation; and these confutations and counter-confutations might go on *ad infinitum*. The remedy for this lies in the creditor laying a *wager*; and the law in this case is laid down by Yājña., 2. 18; which means that in a case where the creditor has laid a wager, if he establishes his claim, the other party should be made to pay to him the amount of the claim as also that of the wager. In this explanation '*svapaṇam*' has been taken as 'the wager laid by the creditor-claimant' (*svataḥpaṇa*). The Aparārka and the Mitākṣarā have widened the scope of

this rule, and do not restrict it to the particular case set forth by Vishvarūpa. According to them, it formulates the following rule.

133. If the suit is one accompanied by a wager, on both sides, then the defeated party should be made by the Court to pay the wager as also the amount of the claim, and also fine.—(Yājña. 2. 18.)

NOTES

There are cases however where only one party, in a fit of rage, lays the wager—'If I am defeated in the suit, I shall pay a hundred rupees,'—but the other party does not accept the wager; in such cases if the suit is lost by the former, he should pay the claim as well as the wager; but if he wins it, then the other party should pay the fine and the claim, not the amount of the wager.

134. The fine and the wager are to be paid to the King and the claim to the plaintiff.—(Vishvarūpa and Aparārka.)

135. In all disputes relating to property, greater importance attaches to the later transaction.—(Yājña. 2. 23a.)

That is to say, if the defendant succeeds in proving the authenticity of *repayment*—which is later than the *lending*,—then he wins the suit, and the plaintiff loses it, though the latter may have succeeded in substantiating the fact of the *lending*. For instance, the plaintiff sues the defendant for the recovery of a loan,—the latter answers that he has already repaid it,—even though both parties may succeed in proving their contention, the decree should be in favour of the defendant. Similarly in a case where a man is sued for Rs. 100, but subsequently admits the loan of Rs. 200, the decree against him should be for Rs. 200. (Cf. Nārada 4. 25.) The Aparārka cites a different example :—If the creditor advances, in the first instance, a loan on interest at the rate of 5 per cent—but subsequently he reduces the rate to 2 p.c.,—his claim is to be decreed at the latter rate.

136. To this rule however there are certain exceptions : In disputes relating to Mortgage, Gifts and Sales, greater importance attaches to the earlier transaction.—(Yājña. 2. 23; Mitākṣarā, p. 311.)

NOTES

For example,—if A has mortgaged a plot of land to B and has borrowed money from him,—later on, he mortgages the same land to C,—the decree lies in favour of B.

Vishvarūpa's interpretation of these two rules is entirely different; he proposes two explanations—(1) (*a*) In all disputes, the last-mentioned proof, *i.e.*, ordeal, is the strongest; (*b*) in the matter of mortgage and the rest, the *first*, *i.e.*, documentary evidence, is the strongest;—or (2) (*a*) Among conflicting

written documents, the latest is the most authoritative ; (*b*) in the matter pledge, etc., the earliest is the most authoritative.

LIMITATIONS REGARDING POSSESSION AS PROOF

137. (*a*) If a man sees his land being enjoyed by a stranger [*i.e.*, one not related to him, says Vishvarūpa], and does not complain,—that land becomes lost to him, after 20 years ;—(*b*) in the case of movable property, he loses it after 10 years.—(Yājña. 2. 24 and Nārada 4. 5 and 9.)

NOTES

The Mitākṣarā (p. 325) explains that what this means is only that by such adverse possession extending over 20 years uninterruptedly, the *usufruct* of the property becomes lost—and not that the property is lost, or that the man's title to it drops entirely. That is to say, by filing a suit and proving his title to it, the man can regain his property ; but he cannot claim the produce of the land during the past years. In cases however where the adverse possession has continued without the man's knowledge, he is entitled to the produce also—even after the lapse of 20 years. The ' adverse possessor ' is always liable to punishment ; the law being that he should be punished ' like a thief ' (Nārada 4. 14). Mere possession does not create in him a right over the property, says Vishvarūpa, who holds that all that the text means is that it is not right to ignore the possession by others of one's property ; and when it speaks of ' loss, ' all that is meant is that he cannot claim it in a court of law. As for the property, the King may either confiscate it or hand it over to the rightful owner.

The Aparārka however takes the ' loss ' as pertaining to the *right* of property. Such is the view of the authorities quoted by him.—The punishment ' like a thief,' under this view, is meant for one who misappropriates the property of minors and others.

138. There are exceptions to the above rule : Adverse possession does not lead to loss in the case of Deposits, Boundaries, Pledges, Sealed Deposits, or in that of the property of idiots, minors, kings, women and learned Brāhmaṇas.—(Yājña. 2. 25. ; Mitā. p. 326 ; Nārada 4. 8, 9 and 10.)

NOTES

The reason for this exception lies in the fact that there is justification for the real owner not asserting his right. For instance, in the case of Deposits, as the man who has received the deposit is entitled on that very account, to its enjoyment,—the owner, the Depositor, finds no reason to object to it ;—in the case of Pledges and Sealed Deposits, even though enjoyment is not permitted, yet the owner may not interfere, feeling secure under the law that in the event of the pledgee not returning the property intact, he would be entitled to receive from this latter the value of the property along with interest up to date ;—in the case of the property of the idiot and the minor, it is only natural that they are unable to assert their right ;—women are, by their very nature, modest, and

generally ignorant of their rights ;—the King is too busy with the business of the state to find time to find out and assert his rights over his private property ;—so also the learned Brāhmaṇa is too engrossed in his studies and religious duties to assert his rights over property ;— in the case of Boundaries, the man feels secure under the belief that the boundary-marks are always there to indicate his property.

Manu (8.147) says –' When the owner of the property knows of its being enjoyed by a stranger for ten years, during which time he does not complain of it either to the man himself or to the King, his right over the property ceases.' Medhātithi says that ' stranger ' here stands for *any other person,* not, literally, one who is not related to the owner.—' In the case of things used with friendly assent, they do not become lost by mere adverse possession.' –(Manu 8. 146.)—'If the owner is neither an idiot, nor a minor, and his property is enjoyed by another before his eyes, it becomes lost to him by law, and the adverse possessor shall retain that property' (148).—' But a pledge, boundary, and property of the learned Brāhmaṇa are not lost through adverse possession' (149).

139. When a man does not take any notice of his property being enjoyed by another, for ten years, it becomes lost to him, except in the case of the property of a minor, an aged person, an invalid, a man in trouble, one gone abroad,—also in the case of Deposits, Pledges, slave-girls, boundaries ; or the properties of the King and the Vedic scholar.—(Arthashāstra 3.16.)

140. If a house has been occupied by a person uninterruptedly for 20 years, he cannot be asked to vacate it.—But this does not apply to cases where either the relations of the owner, or Vedic scholars or heretics occupy a house.—(Arthashāstra 3.16.)

141. In cases of misappropriation of the Deposit, etc., the misappropriator shall be made to pay to the owner the value of the property; and he shall also pay a fine of equal amount. –(Yājña. 2. 26.)

NOTES

Or in the cases where the culprit is a rich man he should be made to pay such a fine as would be felt by him and would act as a deterrent ;—on the other hand, if he is a man who is not rich enough to pay a fine equal in amount to the value of the property concerned, the fine may be lower, just enough to make it felt. In cases where the culprit is absolutely penniless, corporal punishment shall be inflicted on him ; or he may be put into prison, or made to make good the requisite amount by work. – (Mitā. p. 331.)

TITLE AND POSSESSION—RELATIVE STRENGTH

142. *Title* to a property is superior to *Possession,*—' title' arising from Inheritance, Partition, Purchase, *Parigraha*

(finding of unclaimed fuel and wood) and *Adhigama* (coming by buried treasure).—(Yājña. 2. 27.)

NOTES

According to Vishvarūpa 'Āgama,' 'title,' stands for *Documentary Evidence.* Title is superior, because for the determining of one's actual right to a property, Possession depends upon title ; in fact Possession is legalised by Title, Possession not sanctioned by Title is not legal. Possession, by itself, never produces proprietary right. (See Nārada 4,12.) Such is the meaning of the text according to Vishvarūpa and Mitākṣāra ; but according to Aparārka, the meaning is that title is an *additional* proof,—in addition to, in support of Possession.

143. Thus the Possession that can be admitted as proof is only one (1) which is supported by Title, (2) which has continued uninterruptedly for a long time, for three generations (Nārada 16, Yājña. 2. 27), (3) which has never been objected to and (4) which has been well-known to the other party.

NOTES

But all that this means is the absence of the *knowledge* of Title, not the absolute *absence* of Title. There is a further qualification : Possession as proof is vitiated by the absence of knowledge of Title, only in cases where it has extended over a period of time within the limits of ordinary memory ; if it has extended beyond the reach of memory, the absence of the knowledge of title does not vitiate the evidential character of Possession. For instance, uninterrupted Possession during one hundred years or more would establish one's right, even though he can adduce no Title.—But even so, if during all this time there has been a common belief that the man's possession is without Title, the strength of such Possession becomes considerably weakened.—(Mitā.)

144. Title also does not possess full evidential strength, where there is no Possession at all ; [because, says Vishvarūpa, it is Possession that validates the Title].—(Yājña. 2. 27.)

NOTES

The reason for this lies in the fact that purchase, gift and such other sources of Title, by their very nature, involve some sort of Possession. For instance, the gift of a cow is not complete until the donor has caught hold of its tail.

Nārada declares that 'even when there is documentary proof, and there are witnesses in support,—if there is no Possession, the right is not strong,—specially in the case of immovable property.'

Another explanation (Mitā. p. 351) of the above text of Yājñavalkya (27) is as follows: Document, Witness, and Possession having been declared to be the three kinds of proof, the text in question proceeds to determine the

superiority of these in cases where all three are produced. (*a*) In the first place if a Title substantiated by witnesses is produced, it is stronger proof than Possession; (*b*) in a case where the Possession has continued for three generations, and comes to be disputed in the fourth, it is stronger than Title supported by documents; and (*c*) during the second and third generations, Title accompanied by even some slight Possession is stronger than Title entirely devoid of Possession.

On the relative strength of Title and Possession, Medhātithi (8. 147) has the following remarks—(*a*) In the absence of Title, if a property has been in the possession of one's three ancestors, it becomes his *own*, irrespectively of 20 years having elapsed or not;—(*b*) other texts lay down that in the first generation the only source of ownership of immovable property is Title; in the second, Title *plus* Possession; and in the third, Possession only; and here also there is no limit of twenty years:—there are other texts again which deny all ownership on the basis of mere Possession, even though extending over 100 years; but this applies to the first generation only. The conclusion deduced from all this is that in the first generation there can be no ownership due to mere Possession, even though it extends over many years; so also for the second generation; but after that, long-standing ownership does bring about ownership, even though the owner may be unable to prove his Title; and this for the simple reason that after the lapse of a long time, it becomes impossible to prove Title by means of either documentary or oral evidence. Hence long-standing Possession is taken as justifying the presumption of its being based upon proper Title. It is on this ground alone that Possession has been declared to be a '*proof*' of ownership, not its *source*, among which latter are only the following seven—(1) Inheritance, (2) Finding, (3) Purchase, (4) Conquest, (5) Money-lending, (6) Trade and Agriculture and (7) Gifts.—Medhātithi has offered several explanations of the limitation of 'twenty years.'

145. When there are no witnesses (or documents) available, possession is the sole proof of ownership.—(Arthashāstra 3. 16.)

146. When a man has acquired a Title to a certain property,—if his rights are challenged, it is incumbent upon him to prove the Title by means of documentary and other kinds of evidence [or according to Vishvarūpa, when the validity of a written document is challenged, the man in whose favour it was executed should prove its validity];—if he fails in this, he does not only lose the property but also becomes liable to fine.—(Yājña. 2. 28.)

147. If the right is challenged, not during the lifetime of the acquirer himself, but during that of his son,—then it is not necessary for the latter to prove the Title; all that he has to do is to prove Possession [undisturbed, unchallenged and continuous; and he is to be fined only if he fails to prove such Possession, adds the Mitā.].—(Yājña. 2. 28.)

NOTES

But he cannot retain the property any longer, says Vishvarūpa.

148. If the right is challenged in the third generation [it is not necessary for the man to prove the Title, nor to prove that the Possession has been undisturbed or unchallenged, adds the Mitā.], simple Possession is all that he has got to prove.

NOTES

And in this case the man may retain the property, says Vishvarūpa.

Such is the sense of Yājñavalkya's text. The Mitākṣarā however alters the trend of the rule: It adds that what is meant is that the son or the grandson also loses the property by failing to prove the Title,—the only difference being that while in the case of the acquirer himself, failure to prove the Title renders him liable to fine, there is no such liability incurred in the case of his son or grandson. This view is accepted by the Aparārka also (p. 637). The son, according to Mitā., is liable to fine, only if he fails to prove the Possession to be long-standing, etc., etc.

The Aparārka explains that the present rule applies to cases where Possession has continued 'beyond the *smārta time*,' *i.e.*, 'from time immemorial, out of memory,' *i.e.*, 'continuing through three generations,' as mentioned in some texts; or for sixty years, as held by Nārada, who ascribes 20 years to each 'generation'; and according to this last authority, no 'title' need be enquired into if there has been continued possession for 60 years or more; up to 60 years, it is time 'within memory,' and beyond 60 years it is 'time out of memory.' Having quoted several texts to the effect that the property that has been possessed for three generations cannot be recovered from the possessor, the Aparārka comes to the conclusion that all that is meant is that after the lapse of 60 (according to others, 100) years, it is ordinarily not possible to prove any flaw in the original title; but if in any case such flaw does come to be detected, the property must be given up by the possessor, even after 100 years,—on the ground that the flaw in the title vitiates the possession of the first generation, and this vitiation affects the possession of the following generations also. The penalty for wrongful possession however is to be inflicted only during the first generation, later generations only lose the property.

149. [Vishvarūpa reads an additional verse which provides a reason for what has gone before]—'It is necessary to prove the title, and even the acquirer's son cannot retain the property, *because it is only by Title that Possession can be legalised;* and *Possession without Title is illegal.*'—(Yājña. 2. 28a).

150. If, however, the acquirer of the property happen to die after he has been sued and his Title to the property has been challenged,—before the suit has been tried and

decided,—then it becomes incumbent upon his heirs to prove the Title.—(Yājña. 29.)

NOTES

Because in such cases, mere Possession, even though supported by evidence, is not sufficient proof; for the simple reason that the suit filed has already challenged, and to that extent weakened, the strength of the Possession.—(Cf. Nārada 4. 22.)

LEGAL AUTHORITIES

151. The King shall investigate cases with the help of, and in strict accordance with, *Dharmashāstra* and *Arthashāstra* (Yama);—the 'Dharmashāstra' consists of the Four Vedas along with the subsidiary sciences, exegetics and the Smṛtis (Pitāmaha); and 'Arthashāstra' is the science that deals with state-craft.—(Bhaviṣya-Purāṇa.)

152. Among Smṛtis the authority of Manu is paramount.—(Bṛhaspati in *Aparārka* on Yājña. 21a.)

153. When there is conflict between two ordinances, the issue is to be determined by means of well-established reasoning.—(Yājña. 21a.)

NOTES

The total neglect of Reasoning or Logic has been condemned by Bṛhaspati. The usefulness of Logic and Reasoning has been emphasised by Manu also. —(8. 44.)

154. In the trying of cases, only those ordinances of the *Arthashāstra* are to be used which are not repugnant to the former. Those that are so repugnant are to be rejected.—(Nārada and Yājñavalkya 21b.)

NOTES

As an example of this conflict between Dharmashāstra and Arthashāstra we have the following:—We find a rule of Political Science declaring that 'the acquisition of a friend being more important than that of land or gold, one should make special efforts to acquire a friend'; on the other hand we have the legal ordinance that 'in investigating cases the King should be free from all hate and love'; now in a certain case it may so happen that by showing a favour to one of the parties the King would obtain in him a useful friend, which advantage he would lose if he dealt with the case strictly according to law. In such a case it is the clear duty of the King to follow the legal ordinances and reject the political maxim.

The above explanation of Yājñavalkya's rule has been criticised by Vishvarūpa, who says that if the text meant as above, then it would be entirely irrelevant in the present context. According to him the meaning is—'When there is conflict between a legal text and what one deduces from the proceedings, then the deduction has to be rejected in favour of the legal text; because deductions are based upon Temporal science which is purely temporal, and Spiritual science (which includes legal texts) is always more authoritative than Temporal science.

155. Suits should be tried, not entirely on the basis of Smṛti-law, which is of universal application, but also in accordance with such laws, local, tribal and commercial or social (as are not repugnant to Smṛti-law).—(Manu 8. 41.)

156. In cases where no guidance is afforded by any ordinances, decision should be taken on the basis of such long-standing customs as may not be repugnant to ordinances.—(Kātyāyana.)

157. In cases of disputes among tradesmen and artisans and agriculturists and musicians or players,—the King should have the investigation made by those communities themselves.

158. In the private affairs of men, cases are to be investigated by the preceptor or the master or the father or the elder brother or grandfather or the whole family.—(Vyāsa.)

NOTES

A too literal application of Law-texts has been deprecated by Manu (8. 45), who lays down that in trying suits, the King shall take note of (1) the true facts of the case (which he may deduce from the proceedings, even though they may not have been clearly set forth by the parties) ;—this is what has been held by Yājñavalkya (2. 19) also ;—(2) the nature of the case, or the motive of the parties ;—(3) himself, *i. e.*, he should exercise his own judgment, or have due regard of his own interests;—(4) the character of the witnesses ;—(5) the nature of the place and (6) of the time (which affect the importance of the case).

FACTS

159. What the King and the Court should try to do is to ignore or reject the special pleadings of the parties, and concentrate on the real facts of the case, on the basis whereof cases should be tried.—(Yājña. 2. 19.)

NOTES

Special efforts are necessary for this; because in law-suits true facts,—if not properly borne in mind—are very often over-clouded or reversed in the course of egal proceedings, which are beset with all sorts of subterfuges and

tricks. According to others the meaning of this is that the facts of the case, if not set forth by witnesses, are rendered futile in law-suits, so that the first attempt should be to get at the facts by means of investigation ; and the Court should proceed to examine witnesses only in the event of its being found impossible to ascertain the facts by other means.

According to the Aparārka what the text advises is that first of all the Judge shall try to extract the facts from the two parties themselves, before calling evidence. It is only when he fails in getting at the facts from the parties that he should proceed with the regular trial by calling evidence, etc.

Documents, Contracts or Transactions when null and void

160. A contract made by a person intoxicated, or insane, or grievously diseased, or wholly dependent, by an infant or by a very aged man, or by an unauthorised person, is invalid.—(Manu 8. 163.)

161. 'Agreement made contrary to law or to settled usage can have no legal force, even though established by proofs.'—(Manu 8. 164.)

162. 'A fraudulent mortgage, a fraudulent gift or acceptance, and any transaction wherein fraud is detected, shall be declared null and void.'—(Manu 8. 165.)

163. 'Should even a wholly dependent person make a contract for the benefit of his master's family, the master shall not rescind it.'—(Manu 8. 167.)

164. 'What is given by force, what is enjoyed by force, what has been caused to be written by force, and all transactions done by force, Manu has declared void.'—(Manu 8. 168.)

165. Transactions entered into under force or under threat and the like,—even though completed—should be set aside ; as also those entered into by women, or at night, or inside the house, or outside the village, or by enemies. Such transactions should be gone through again, under better conditions and more openly, all secrecy being eschewed.—(Yājña. 2. 31.)

166. Transactions entered into by the following persons are not to be entertained (or admitted)—one who is drunk, or insane, or invalid, or in grief, or a minor, or frightened or exiled ;—nor a transaction entered into by a person on behalf of another who is neither related to, nor authorised by the latter.—(Yājña. 2. 32.)

[Such authorisation is to be made in cases where the party is too shy, idiotic, insane, too old, a woman or an invalid. No such attorney is admissible in serious criminal cases. Persons other than those so authorised, or servants or pupils or relatives, are to be fined if they interfere in the proceedings.—Aparārka, p. 639.]

Notes

There are some texts which lay down that no suit can lie between the teacher and pupil, or between father and son, or between husband and wife, or between master and slave. But *Mitākṣarā* (pp. 361-362) holds that what is meant by these is that in such cases, the King should persuade the plaintiff to withdraw the suit, which should be proceeded with only if the persuasion fails and the party persists in it;—cases are not rare where such suits have to be filed and it would not be right to rule them out entirely.

Nārada's dictum that 'a suit filed by one person against several persons shall not be admitted' has been taken to preclude the simultaneous trial of several suits filed by one person against several persons with divergent interests.

Lost Property—Claims

167. In the case of the finding by the king or his officers of property lost on the public road or near the Customs House and such places, if the owner comes to claim it, it should be given to him, if he proves his ownership by its description; if he fails to prove it, he should be fined the amount of its value.—(Yājña. 2. 33; Manu 8. 32.)

Notes

Such lost property is to be surrendered only if it is claimed within three years of its finding. After the lapse of three years, it becomes escheated to the King (Manu 8. 30).—If the property is claimed within one year of its finding, the whole of it should be surrendered to the owner if he substantiates his claim by correct description of the articles lost—name, form, size, number, place where lost, whence acquired; but if it is claimed during the second or the third year, the King may deduct from it a portion, as fee for the keeping of it; the fee being the *twelfth* part during the second year, and the fourth part during the third year. After the third year also, the King may only make use of the property, and on the owner turning up, it should be returned to him, after deducting the royal fee;—but of the King's share, the fourth part should be given to the persons who had found the property.—In the event of no one turning up to claim the property, the whole of it goes to the King, the fourth part being paid to the finder. Manu (8. 33) lays down the King's share as the 'sixth' part, or 'tenth' or 'twelfth,' according to circumstances.

Medhātithi mentions and rejects the view that what is meant by the property becoming 'escheated' to the King is that he is to have the use of and not that he becomes the actual owner.

TREASURE-TROVE

168. As regards treasure buried under the ground,—(*a*) if it is found by the King, he shall take half of it, giving half to the Brāhmaṇas (Manu 8. 38) ;—(*b*) if it is found by a learned Brāhmaṇa, he should take the whole of it (Manu 8. 37) ;—(*c*) if it is found by others [*i.e.*, ordinary Brāhmaṇas, not learned], the King should take the sixth part;—or according to the Aparārka, the King should give one-sixth of it to the finder.— If the finder fails to report the finding to the King, and it comes to be known afterwards, he should be made to surrender the whole amount, and should also be fined according to his circumstances.—(Yājña. 2. 34-35.)

169. If the owner of the found treasure turns up to claim it,—and he succeeds in substantiating his claim,—the King shall hand it over to him, after deducting the sixth or the twelfth part as the royal share.—(Manu 8. 35.)

170. All underground treasure belongs to the King.—(Gautama 10. 43.)

NOTES

But this applies to only that treasure the owner or burier of which is not known—says Medhātithi (Manu 8. 35);—the reporter of the finding should receive the sixth part; but this, according to Medhātithi, applies to only those cases in which the *finder* is either the person who had buried the treasure or his direct descendant.

171. If an honest citizen proves his ownership by establishing the fact that the treasure had been buried by his ancestors, he shall receive the whole of it.—If he fails to establish his ownership he shall be fined 500. If he takes it surreptitiously, he shall be fined 1000.—(Arthashāstra 4.1.)

172. If the claim turn out to be false, the claimant shall be fined either the eighth part of his own property, or some equitable portion of the finding.—(Manu 8. 36.)

173. All underground treasure above the sum of a hundred thousand belongs to the King ; if what is found is less than that, the King shall give the sixth part of it to the finder.—(Arthashāstra 4.1.)

STOLEN PROPERTY

174. In cases of theft, the property stolen shall, on recovery, be made over to the owner. If he fails to recover the stolen property, the King shall make it good out of his own treasury.—(Yājñavalkya 36 ; Manu 8. 40).

COURT OF WARDS

In connection with the trial of suits, it has been felt by legal writers that some provision must be made for safeguarding the interests of minors and other persons not capable of taking care of themselves. To this end we have the following rules :—

175. The King shall protect the property of a minor until he has finished his education, or until he has passed his minority.—(Manu 8. 27.)

176. In like manner care must be taken of barren women, of women who have no sons, of women whose family is extinct, of faithful women whose husbands are away or dead, and of women afflicted with diseases.—(Manu 8.28.)

177. A righteous King must punish like thieves those relatives who appropriate the property of such females during their lifetime.—(Manu 8.29.)

DECISION—JUDGMENT

178. If the plaintiff succeeds in establishing his proofs, he succeeds in his suit and obtains the Decree. If, on the other hand, he fails in establishing his proofs, his suit fails, and he obtains Defeat.—(Yājña. 2. 8a.)

179. Decisions have been classified under four heads: (1) based on Righteousness, where the defendant has righteously admitted the claim, and which has been further ratified by means of ordeals;—(2) based on legal proceedings, based upon evidence and counter-evidence produced during a regular trial;—(3) based on arguments (dealing with facts, of possession, custom and so forth);—(4) based upon royal command, in a case where the evidence adduced by both parties has been found to be of equal force, and the Court has been unable to come to decision ; but such royal command should not be such as violates the law or the opinion of the members of the Court.—(Bṛhaspati—*Parāsharamādhava* p. 150.)

180. After the pronouncing of the Judgment, the property under dispute shall be handed over to the winning party, along with the Court's decree in writing.—(Kātyāyana in *Parāsharamādhava* p. 151.)

181. In cases where the debtor has denied the debt, if the decision is against him,—he shall be made to pay it to the creditor, and also a fine—in the form of the twentieth part of the claim to the King.—(Nārada.) This has been taken to apply to cases where the debtor is in difficult circumstances.

182. According to Viṣṇu, the King is to receive the tenth part of the claim from the debtor, as *fine*, and the twentieth part from the creditor, this latter being meant for maintenance charges of the Court (says Mādhava, p. 152).

183. When the plaintiff has claimed a number of things—gold, silver, clothes, and so forth,—and the claim is denied *in toto* by the defendant,—in course of the trial,—if the plaintiff is able to establish, by the evidence he adduces, his claim to only a few of the things claimed,—*i.e.*, only a part of his claim,—the defendant should be made to repay the entire claim, all the things mentioned in the plaint [along with a fine, adds Vishvarūpa].—(Yājña. 2. 20.)

NOTES

Because from the fact of a part of the claim having been found true, the natural deduction is that the other parts also are true;—if the plaintiff is truthful on one point, it follows that he is truthful on other points also; and if the defendant has been found to be untruthful on one point, it follows that he is untruthful on other points also.

This shows that reasoning and deduction also find place in the investigation of law-suits; so that no blame attaches to the Judge if he bases his decision on right deduction, even though such decision be found to be against actual facts (not brought out during the trial). This has been clearly asserted by Gautama (11. 3—24 and 32).

Some law-givers—*e.g.*, Kātyāyana—have held that in a case where the plaintiff can prove only a part of his claim he should receive that part of the claim only.—But this has been held to apply to cases where the son is sued for his father's debts; and the reason for this favour shown to the son lies in the fact that he does not deny the debt, he only says that he knows nothing about the debt, and as such he cannot be regarded as a liar, to the same extent as the contractor of the debt himself.

The Aparārka has tried to reconcile the two views by asserting that the rule laid down by Yājñavalkya is meant for those cases where the defendant makes the 'denial' in an arrogant manner, adding 'if the plaintiff succeeds in proving the truth of even a little of his claim, I shall pay all that he claims,' and so forth.

In criminal cases, even if a part of the charge is proved, the whole should be regarded as proved. But according to the Aparārka, only that much of the *unproved* charge has to be taken as proved, which is a natural corollary to what has been proved, *e.g.*, if it is proved that a young man was lying for a whole night with a woman on the same bed, the charge of adultery also should be taken as actually established.

184. In a case where the plaintiff, after having proved his claim, adds that the defendant owes him a few more things, which he had forgotten to include in his claim,—this additional claim cannot be decreed in his favour.—(Yājña. 20.)

NOTES

Vishvarūpa reads '*likhitaḥ*' (in place of '*likhitam*') and explains the text to mean 'If the man has been *reported* to the King as having denied the claim of several things, etc.' (the rest as above); but the difference in this explanation becomes more marked in regard to the other part of the text which means 'if the man has *not* been *reported* to the King, he is to be made to pay only the entire claim, *not the fine*.'

185. The debtor who has denied the debt, or the man who has laid a false claim,—should be fined double the amount of the claim.'—(Manu 8. 59.)

186. If the judgment-debtor is unable to pay the amount due, he shall repay the creditor by working for him.—(Manu. 8. 177.)

187. But the Brāhmaṇa-debtor is to be allowed to repay it by easy instalments.—(Manu 8. 177; 9. 229.)

188. If the man is incapable of doing work, he should be put in prison.—(Medhātithi on Manu 9. 229.)

PENALTIES

(*Parāsharamādhava* pp. 155—160.)

189. Penalties have been classed under four heads—(1) *Vāgdaṇḍa*, Censure, (2) *Dhigdaṇḍa*, Interjectory Reproach, (3) Monetary, and (4) Corporal.

190. When the offence is a slight one, censure is sufficient; a minor offence is to be met with Interjectory Reproach—'fie,' 'shame' and so forth; a middling offence is to be met by monetary penalty, fine; and Disaffection against the King is to be met by imprisonment, or banishment or death.

NOTES

Another distinction is this—Friends, elders and priests should be punished with censure; ascetics with Interjectory Reproach; other litigants with monetary fine.

191. The Brāhmaṇa is never to suffer capital punishment, for him there is banishment. [But according to Mādhava this is meant only for such Brāhmaṇas as have no property.]

192. Manu lays down shaving of the head as a substitution for death in the case of the Brāhmaṇa.

APPEALS

193. Whenever any decision has been arrived at (by the court), or a punishment has been inflicted,—the King shall hold it to be legal, and shall not annul it. —(Manu 9.233.)

NOTES

In this text, we meet with two technical terms '*īritam*' and '*anushiṣṭam.*' These have been translated above according to the explanation given by Medhātithi and other commentators. But according to a definition provided by Kātyāyana, '*īritam*' would be 'a claim that has been declared to be just or unjust by the assessors,' and '*anushiṣṭam*' would be 'a claim that has been confirmed by witnesses.' This latter explanation however is confusing. As a *general* rule, what has been stated above is quite reasonable. Exceptions are provided for by Manu in the next verse (234).

194. If a case has been dealt with by the Ministers or by the Judge in an illegal manner, the King himself shall reconsider it, inflicting a fine of 100 *Paṇas* on those persons.—(Manu 9.234.)

NOTES

This provides for revision by the King on his own initiative. But other authorities have provided for appeals to be lodged by the parties themselves. —(Vīramitrodaya, pp. 121—123.)

In this connection we meet with a gradation of authority among the trying agencies.

195. In dealing with law-suits Judges appointed by the King are more authoritative than Village-Communities, which are more authoritative than Trade-guilds, which latter again are more authoritative than *Families* or *Agriculturists* (according to Aparārka).—(Yājña. 2.30.).

NOTES

That is to say, if a suit has been decided by the members of the family, the decision may be appealed against, to the Trade-guild; from whose decision appeal lies with the Village-Community, from whose decision again appeal lies with the King's Court.

196. The decision of the Court also may be appealed against, to the King himself, who should try the suit with the help of a (Privy) Council consisting of members possessed of qualifications superior to those of the members of the first Court.—(Nārada 1.7.)

197. If the appeal succeeds, the members of the first court, as also the decree-holder, should be fined double the amount of the claim involved, if the wrong Judgment was due to mistake on the part of the Judge and assessors; if it was due to the witnesses these latter alone should be fined. If the appeal fails, the appellant shall be fined.—(Mitākṣarā on Yājña. 2.30.)

NOTES

Medhātithi (on Manu 8. 2) quotes Nārada (1.8) on the comparative authority of (1) the King, (2) the Judge appointed by the King, (3) *Gaṇa*, 'union' of Builders and other artisans who wander about in groups, in search of work (4) *Shrēṇi*, Trade-guilds and (5) *Kula*, Family (or according to some, '*Kula*' stands for 'neutral persons'). The Shrēṇī or Guild consists of members, each one of whom can work individually by himself, while in the *Gaṇa* or Union, all the members work together, never singly.

CHAPTER IV

EVIDENCE

It has been explained above that Evidence is of four kinds—(1) Documentary, (2) Oral, (3) Possession and (4) Ordeals.

We shall now deal with each of these four in detail.

Documents

1. Document is of two kinds—(*a*) written by oneself, (*b*) written by another.—(Nārada 4. 135.)

Document is of two kinds—(*a*) written by the common people, (*b*) written by the King.—(Vashiṣṭha, app. 10.)

Document is of three kinds—(*a*) written by the King, (*b*) written in public, by a public scribe, (*c*) written by the party himself.—(Bṛhaspati 8.3.)

Document is of three kinds—(*a*) Attested by the King, (*b*) attested by witnesses, (*c*) unattested.—(Viṣṇu 7.1. 3.)

NOTES

The first division of Document is into—(A) Written by the King, Royal Edict, and (B) Written by the Common People ; and of the latter there are two divisions—(*a*) written by oneself (unattested) and (*b*) written by another (and attested).—(Mitākṣara on 2.84).

(A) DOCUMENT WRITTEN BY THE KING—ROYAL EDICT

2. Of the Royal Edict, there are three divisions—(*a*) *Dāna-patra*, Royal Grant, (*b*) *Prasāda-lekha*, mark of Royal Favour, and (*c*) *Jaya-patra*, Decree.—(Bṛhaspati 8.)

The Royal Edict is of four kinds—(*a*) Grant, (*b*) Decree, (*c*) Proclamation of Commands, and (*d*) Request addressed to Teachers and other respectable persons.—(Vashiṣṭha, in Aparārka, p. 683 ; and Vīramitrodaya-Vyavahāra, p. 195.)

3. Having made a gift of a tract of land or the like, the king shall cause a formal grant to be executed on a copper-plate, or a piece of cloth, stating the name of the place, the king's three ancestors, and the king's mother, the king

himself,—containing the statement 'This grant has been made to A, belonging to such and such a Vedic School;'—it is to be as endurable as the Sun and the Moon; it is to descend, by right of inheritance, to the son, grandson and more remote descendants, as a gift which should never be cut down or taken away, and is to be entirely exempt from all reductions.—(Bṛhaspati 8. 12—14.)

When the king has made a gift of land, or of royalties,* he should have a document written up, for the purpose of making the gift recognised by future kings.—(Yājñavalkya 3. 18.)

Either on a piece of cloth, or on a copper-plate, the king shall get written the deed of gift,—mentioning thereon the names of himself and of his ancestors [and that of the Donee, adds the Mitākṣarā], the exact extent of the gift, the † boundaries of the land given away, and the Era.—(Yājna. 3. 19.)

To those upon whom the king has bestowed land, he must give a document, for the information of future kings—which must be written on a piece of cloth or copper-plate, and must contain the names of his ancestors, a declaration of the condition of the land, imprecations upon those who would seek to appropriate the gift.—(Viṣṇu 3. 82.)

4. The grant shall be attested by the king and bear his seal.—(Yājñavalkya 3. 19.)

The grant shall be sealed by the king.—(Viṣṇu 3. 82.)

A document is said to be 'attested by the king' when it is written, by his order, by the Royal Scribe, and signed by the Chief Judge in his own hand.—(Viṣṇu 7. 3.)

The Grant should be written by the Minister, and sealed and signed by the king himself.—(Vashiṣṭha, in Aparārka, p. 683, and Vīramitrodaya, p. 195.)

The Royal Grant is genuine when supported by the royal seal, witnesses and the king's signature.—(Kātyāyana in Aparārka, p. 684.)

---

* Entitling the donee to receive a fixed portion of every kind of merchandise imported.—(Aparārka.)

Assigning to the donee a fixed share out of the produce of every plot of land.—(Mitākṣarā.)

† Thus the Mitākṣarā; according to Aparārka, describing the evil effects of interfering with the gift.

The Royal Scribe, who writes out treaties, should write the grant on copper-plate or on cloth.—(Vashiṣṭha in Vīra.-Vyava., p. 193.)

The King, in his own hand, shall attest the grant, saying 'This is agreed to by me, the king, the son of so and so.'

The Grant shall be attested by the Minister with the remark—'I know this.'—(Bṛhaspati 8. 16.)

The grant shall be provided with the King's seal—with a precise statement of the year, month, fortnight and date. Such a document is called the "Royal Edict."—(Bṛhaspati 8. 17.)

5. When the King, satisfied with the faithful services, valour and other good qualities of a person, bestows upon him landed or other property, the document conveying this gift is called '*Prasādalikhita,*' Mark of Royal Favour.—(Bṛhaspati 8.18.)

6. The document that establishes a claim, recording the four parts of the judicial proceedings, and bearing the Royal Seal, is called *Jayapatra,* 'Decree.'—(Bṛhaspati 8.19.)

7. To the man who has proved his claims to a property, movable or immovable, the King shall grant the Decree, wherein shall be set forth the plaint, the rejoinder, the evidence and pleadings, its examination, the law-texts bearing upon the question, and the final decision.—(Vyāsa in Vīra.-Vyava., p. 194.)

8. If there is agreement among the members of the court, then alone is the Decree final and absolute.—If there is disagreement, the matter should be regarded as open to investigation.—(Nārada 3.17.)

9. Members of the Court are to append their signatures to the Decree.—(Manu quoted in Mitākṣarā.)

10. One suit having been decided, if there are other suits similarly circumstanced, the decision arrived at in the former case becomes applicable to the latter also. This application of the former decision is a particular kind of Decree, called '*Pashchātkāra.*'—(Kātyāyana in Vīra.-Vyava., p. 195 and Parāsharamādhava-Vyava., p. 90.)

(B) DOCUMENTS WRITTEN BY THE COMMON PEOPLE

11. Documents written by common people are written by a public scribe, in a public place, and set forth the name and

genealogy of the king, the name of the year, month, fortnight and date; the caste and names of the parties and their fathers, the property involved, rates of interest and so forth.—(Vyāsa in Parāsharamādhava-Vyava., p. 92.)

12. Documents written by the common people are of seven kinds, dealing with—(1) Partition, (2) Gift, (3) Purchase, (4) Mortgage, (5) Convention or Agreement, (6) Bondage, and (7) Debt.

There are eight varieties—(1) *Chīkara*—written by a public scribe employed by the Debtor and the Creditor, setting forth the declarations of both parties—along with the names of their fathers and their witnesses; (2) *Svahasta*—written by the debtor in his own hand, not attested by witnesses; (3) *Upagata*— * written by a scribe or by the creditor himself, and admitted by the debtor; (4) *Ādhipatra*—mortgage-deed; (5) *Krayapatra*—Deed of Sale; (6) *Sthitipatra*—a document setting forth the conventions of the learned, of the Trade-guilds, and of citizens and villagers; (7) *Sandhipatra*—document embodying the compromise arrived at by the interposition of the elders before whom a certain accusation has been laid,—setting forth the facts of the case; (8) *Shuddhipatra*—Document of Absolution, awarded to a man who, having been accused of a wrong act, has cleared himself by the performance of penance.—(Vyāsa in Parāsharamādhava-Vyava., p. 92.)

13. *Sīmāpatra* is the document setting forth the delimitation of disputed boundaries, as recorded by the King, after due investigation, mentioning the names of witnesses through whom the decision has been arrived at.—(Viṣṇu 8. 255.)

14. When a certain understanding has been arrived at by the parties voluntarily, a deed should be drawn up, attested by witnesses—the name of the creditor being entered first [then the name of the debtor, says Vishvarūpa];—it shall mention the month, fortnight, and date,—the name, caste, *gotra*, Vedic School, father's name of the parties [also the property concerned].—(Yājñavalkya 2. 84-85.)

Caste, names, residence, substance, amount, rate of interest, year, month, fortnight, date—these should be mentioned in the document.—(Vyāsa in Aparārka, p. 685.)

* So explained by Kātyāyana (Parāsharamādhava-Vyava., p. 92).

15. When the transaction is complete, the debtor shall attest the document in his own hand, with the words—'What is here set forth is admitted by me A, the son of B.'—(Yājña. 2.86.)

16. The document shall be attested by witnesses in their own hands, who shall add their own and their fathers' names, adding 'I am witness to the transaction'; the number of witnesses shall be an odd one.*—(Yājña. 2.87.)

17. The scribe shall write down his own and his father's name—adding that he has written the document at the request of both parties.—(Yājña. 2. 88.)

18. If the debtor happen to be illiterate, he should have his attestation written by another person, in the presence of literate witnesses.—(Nārada in Aparārka, p. 685.)

19. If the witnesses to a transaction are illiterate, their attestation shall be written by another person, in the presence of literate witnesses.—(Nārada in Aparārka, p. 685.)

20. A document is valid even when not attested by witnesses, if it is written by the party himself,—except when it has been written by force or through deception.†—(Yājña 2.89.)

21. Documents are of two kinds—written by the party himself, and written for him by another scribe: the former is valid without witnesses; the latter requires attesting witnesses.—(Nārada 4. 135.)

22. A document is said to be attested by witnesses when, having been written anywhere by any one, it is attested by witnesses in their own hands.—(Viṣṇu 7. 4.)

23. A document is said to be *unattested* when it has been written by the party himself and bears the signature of no witnesses.—(Viṣṇu 7. 5.)

24. If the defendant urges that the document was not written by the scribe therein mentioned, nor attested by witnesses there named, such a document is suspected of being *forged*.—(Kātyāyana in Aparārka, p. 689.)

25. If the genuineness of a document is in doubt, it should be tested by means of the following corroborative proofs:

* This according to Aparārka, which accepts the reading 'asamāḥ.'—Vishvarūpa, with the same reading, fixes the number at *three* only, quoting the text '*lekhye tu paramāstrayaḥ*.'—The Mitākṣarā reads 'samāḥ,' and explains it to mean that the witnesses should be *of equal status*.

† Or temptation, anger, fear, intoxication and the like—adds the Mitākṣarā.

(*a*) by comparing the suspected writing with the writing of the party on a document admittedly in his handwriting; (*b*) *Yukti-prāpti* (probability* of ownership); (*c*) *Kriyā* (evidence adduced in regular suit; (*d*) *Chihna* (peculiarities of handwriting or seal); (*e*) *Sambandha* (previous business-relationship between the parties); (*f*) *Āgama-hetu* (proof of ownership of the creditor).†—(Yājña. 2.92.)

26. If a doubt should exist as to the authenticity of a document, its authenticity may be established by examining the handwriting of the party, the tenor of the document, peculiar marks, circumstantial evidence and probabilities of the case.—(Nārada 4.143 and Viṣṇu 7.12.)

27. If a document is signed by a stranger, and is meant for a different purpose, it should be examined, if suspected of being unauthentic, in regard to the connection of the parties, the probability of the title and reasonable inference.—(Nārada 4.144.)

28. In the case of the document alleged to be in the handwriting of the defendant,—its genuineness is to be tested by comparing it with his handwriting; if it is attested by witnesses, it is tested by examining these witnesses.—(Kātyāyana in Aparārka, p. 689.)

29. If the debtor, the witnesses and the scribe are all dead,—the genuineness of the document shall be tested by comparing the writings on the document with the writing of the persons on documents admitted to be in their handwriting.—(Kātyāyana; also Viṣṇu 7.13 in Aparārka, p. 689.)

30. The genuineness of a document is to be tested by making the parties write something and comparing that writing with the alleged signatures on the document.—(Kātyāyana in Vīra.-Vyava., p. 198.)

31. If the debtor denies execution of the deed, the decision shall be taken on the issue of an ordeal.—(Hārīta in Mitākṣarā 2. 92.)

---

* Vishvarūpa, Aparārka and Mayūkha take युक्ति and प्राप्ति separately; the former as 'such reasoning as that the debtor was in need at the time when the creditor was advancing loans,' and the latter as 'Co-residence of the parties.' It means 'Absence of undue force,' according to Vishvarūpa.

† Vishvarūpa takes '*hetu*' separately, as standing for such reasons as 'absence of false witnesses' or 'honesty of the scribe' and so forth. Aparārka takes it as standing for 'Inference.'

32. When a document has been seen by the debtor, and he has made no protest against it for twenty years, then the document becomes free from all defects and fully substantiated.—(Kātyāyana in Vīra.-Vyava., p. 198.)

33. An old document,—if it has not been shown or spoken of for a long time,—and both parties are dead,—cannot be regarded as valid unless it is covered by a mortgage.—(Vyāsa in Aparārka, p. 692.)

34. A bond ceases to be valid if the witnesses, the creditor and the debtor are all dead,—unless its validity can be established by the existence of a pledge.—(Nārada 4. 138.)

35. If a document has not been shown, or mentioned, for thirty years—it cannot be regarded as valid, even though the attesting witnesses be living.—(Bṛhaspati, 8. 29.)

36. If, after the ceasing of the accruing of interest, the document is not shown to the debtor, nor payment demanded of him,—the document is treated as of doubtful validity.—(Bṛhaspati 8. 30.)

37. If the document has been produced in due time,—and the demand has been repeatedly urged and publicly proclaimed,—it remains valid for ever ; even after the death of the witnesses.—(Nārada 4. 140.)

38. If the debt has been paid in part,—or if demand for payment has been made,—the document should be regarded as valid, even though the attesting witnesses may be dead.—(Nārada in Aparārka, p. 689.)

39. A document which is unknown and has never been heard of before, does not obtain validity, when it is brought forward, even though witnesses be living.—(Nārada 4. 141.)

40. What is given by force, what is enjoyed by force, what has been written by force,—all this Manu has declared to be void.—(Manu 8. 168.)

41. A document written under constraint, or under a deception, does not hold good.—(Yājña. 2. 89.)

42. When even a single witness entered in the deed is disreputable and censured (by the public)—the deed is invalidated.—(Bṛhaspati 8. 24.)

43. Where the scribe is found to be disreputable and censured (by the public)—the deed is invalidated.—(Bṛhaspati 8. 24.)

44. A document written by the debtor in his own hand, and not attested by witnesses, cannot be accepted as valid, unless it is admitted by the party alleged to have written it.—(Kātyāyana in Aparārka, p. 686.)

45. That document is valid which is not adverse to the customs of the country, the contents of which are in accordance with the rules regarding Pledge, and which is consistent in import and language.—(Nārada 4. 136 and Viṣṇu 7. 11.)

46. That document which violates local customs, which is couched in ambiguous language or incoherent, or executed by a person who had no right over the property concerned,—is not valid.—(Kātyāyana in Aparārka, p. 686.)

47. A document spoilt by fire, or executed very long ago, or soiled with dirt, or intended for a short period only, or containing mutilated syllables, is invalid.—(Bṛhaspati 8. 25.)

48. An old document, too bright-inked,—or a recent document, too dim-inked,—should be regarded as forged.—(Bṛhaspati in Parāsharamādhava-Vyava. 95.)

49. An unattested document, if caused to be written by force, makes no evidence; neither does a fraudulent document; nor a document, though attested, which is vitiated by the signature of a witness who has been bribed, or of one who is of bad character; or one written by a scribe who is of bad character, or bribed; or one executed by a minor, or by a dependent person, or by one intoxicated or insane, or by on in bodily danger, or in fear.—(Viṣṇu 7. 6–10.)

50. That document is invalid which has been written by a person intoxicated, by one charged with a crime, by a woman, or by a child,—or that which has been caused to be written by force, by intimidation or by deception.—(Nārada 4.137.)

51. A document executed by a mad man or an idiot or an infant, or one who has absconded from fear of the King, or one tormented by fear, is not invalidated (by impossibility to produce its author).—But as a rule, a document executed by a dying person, or one oppressed with fear, or a suffering

person, or a woman, or an intoxicated person, or a distressed person, or at night, or by fraud or force—does not hold good. —(Bṛhaspati 8. 22-23.)

52. If objections taken against the validity of a document are not answered, the man producing it is to be fined the first amercement.—(Kātyāyana in Vīra.-Vyava., p. 199.)

53. If a man alleges a document to be a forgery, but it is proved to be genuine, he should have his tongue, hands and feet cut off.—(Vyāsa in Vīra.-Vyava., p. 199.)

54. If the original document happen to be in an inaccessible place, or is found to be written illegibly, or has been lost, or has its writing rubbed off, or damaged,* or burnt, or torn,—then another document should be executed.† —(Yājña. 2.91).

55. If a document is split, torn, stolen, effaced, lost, or badly written,—another document has to be executed.—(Nārada 4. 146.)

56. If the document is in a remote country, torn, or stolen, or illegible,—then, if it is in existence, time should be given for producing it;—if it does not exist, then the case had to be decided on the strength of witnesses to the transaction.—(Nārada 4. 142.)

57. The document written publicly, by the public scribe and attested by witnesses is more reliable than that written by the party himself, and not attested by witnesses; and the Royal Edict is more reliable than the former.—(Vyāsa in Aparārka 691.)

58. Documentary evidence is superior to oral evidence and ordeal.—(Kātyāyana in Aparārka, p. 692.)

59. Documentary evidence can be rebutted only by documentary evidence, and never by the oral deposition of even a large number of witnesses.—(*Ibid.*)

---

* By insects—says Vishvarūpa.

† Either by the King or by the parties themselves—Vishvarūpa. This can be done only if there is an agreement between the parties. If there is disagreement, then there should be a regular suit; and in that case, the parties should be given time to produce the document. If the document cannot be produced, the case has to be decided on the basis of the deposition of witnesses. If no witnesses are available, recourse must be had to ordeal.—(Mitākṣarā.)

60. Documentary evidence is rebutted by documentary evidence, and oral by the oral.—(Samvarta in Vīra.-Vyava., p. 201.)

61. A document can be annulled only by a document; Document is superior to witnesses.—(Nāradā 1. 145.)

62. A document is not overruled either by witnesses or by ordeal.—(Bṛhaspati 8. 31.)

63. No decision should be taken on the basis of Documents alone.—(Vyāsa in Vīra.-Vyava., p. 197.)

64. The validity of a document becomes diminished by neglect, if it is neither shown nor read out publicly.—(Bṛhaspati 8. 31.)

65. In disputes regarding immovable property,—as to sale or mortgage or partition or gift or purchase,—no claims can be established without Documentary Evidence.—(Marīchi in Parāsharamādhava-Vyava., p. 93.)

66. When the debtor has made a part-payment of the debt, he should enter that on the back of the deed;—the creditor also should write down there in his own hand—'I have received this.'—(Yājñavalkya 2. 93.)

67. When only a part of the debt has been repaid, and the document is not at hand, the creditor shall give a receipt for what he has received.—(Viṣṇu 6. 26.)

68. When the entire debt has been repaid, either the document shall be torn off, or the creditor shall give to the debtor an acquittance-receipt.*—(Yājña. 2. 94.)

69. A written contract having been fulfilled, the document should be torn off.—(Viṣṇu 6. 25.)

70. What has been lent in the presence of witnesses, should be repaid also in the presence of witnesses.—(Yājña. 2. 94.)

71. A debt contracted before witnesses should be discharged before witnesses.—(Viṣṇu 6. 24.)

Oral Evidence : Witnesses

72. In doubtful cases, when two parties are quarrelling with one another, the truth has to be gathered from the deposition of witnesses, whose knowledge is

* The option lies with the creditor—says Vishvarūpa.

based upon what they have seen, heard or learnt.—(Quoted as 'Manu' in Parāsharamādhava-Vya., p. 64; Nārada 1. 147.)

73. In disputed cases, the truth shall be established by means of witnesses.—(Gautama 13. 1.)

74. A witness, Sākṣī, is so called because he has directly seen or heard.—(Manu 8. 74 and Viṣṇu.)

75. What the man has actually perceived in the presence of the parties to the suit—his deposition to that alone should be admitted as evidence.—(Bṛhaspati in Vīra.-Vya., p. 142.)

PERSONS WHO CAN BE WITNESSES

76. Householders, men with male issue, respectable native Kshattriyas, Vaishyas or Shūdras are competent, when called by a suitor, to give evidence.—(Manu 8. 62.)

77. Trustworthy men of all the four castes may be made witnesses in law-suits,—men who are fully conversant with morality and are free from covetousness.—(Manu 8. 63.)

78. Women should give evidence for women; for twice-born men, similar twice-born men; virtuous Shūdras for Shūdras; men of the lowest castes for the lowest.—(Manu 8. 68.)

79. Any person who has personal knowledge of the facts in question may give evidence.—(Manu 8. 69.)*

80. He should be considered as a witness who has witnessed a deed with his own eyes or ears.—(Nārada 1. 148.) †

81. Witnesses shall be of honourable family,‡ straight forward, and of unexceptionable descent.—(Nārada 1. 153.)

82. In family-quarrels, members of the family shall be witnesses.—(Nārada 1. 153.)

83. Brāhmaṇas, Vaishyas, Kṣattriyas or irreproachable Shūdras shall be witnesses: each of these for members of

* What is meant is 'any one who has a knowledge of facts bearing on the case, acquired by any of the valid means of cognition.'—(Vīra.-Vya., p. 143.)

† The term '*sākṣī*' takes the '*ini*' affix in the sense of 'one who sees directly.'—(Pāṇini 5. 2. 91.)

‡ '*Maulāḥ*'—born of well-known and respectable families.—(Kalpataru in Vīra.-Vya., p. 147.)

the same caste;—or all of them may be witnesses for all.—(Nārada 1. 154.)*

84. For trade-guilds, artisans or merchants shall be witnesses; members of an association shall be witnesses for their co-members; women for women.—(Nārada 1. 155.)

85. Persons devoted to austerities, charitable persons, persons of noble families, truthful persons, persons having great regard for virtue, straightforward persons, persons with sons, wealthy persons, persons engaged in the performance of acts prescribed in the scriptures,—shall be witnesses, either according to *jāti* or *varṇa*, or all for all. †—(Yājña. 2. 68-69.)

86. Women should give evidence for women, only in cases between women, or in matters concerning the female sex, which they alone may be supposed to know.—(Vashiṣṭha 16. 30.)‡

87. Those may be witnesses who are in the habit of performing religious duties taught in the scriptures, free from greed and malice, of respectable parentage, irreproachable, zealous in performing austerities, liberal-minded and sympathetic.—(Bṛhaspati 7. 28.)

88. Witnesses shall be faultless as regards the performance of their duties, worthy to be trusted by the king, and free from love and hatred.—(Gautama 13. 2).§

89. Persons not mentioned (in the plaint) may also give evidence.—(Gautama 13. 8.)

---

* The Brāhmaṇa has been excluded, as it is his duty to be constantly engaged in teaching and study, which would be disturbed.—(Medhā.) So he should be called as a witness only when no others are available—adds Vīra-Vya., p. 148.

† *Jāti*, gender; '*Varṇa*,' caste—(*Vishvarūpa*). *Yathāvāti* means that the witnesses should be of the same caste as the parties, in cases where both parties are of the same caste; if the parties are of different castes, then the witnesses are to be '*yathāvarṇam*,' *i.e.*, in the order of the castes.—(Aparārka.) '*Jāti*' stands for the secondary mixed castes, 'Ambaṣṭha' and the rest, and '*Varṇa*' for the primary castes, Brāhmaṇa and the rest. For Brāhmaṇa parties there should be Brāhmaṇa witnesses and so forth. 'Or'—*i.e.*, if witnesses of the same caste as the parties are not available, then, 'all' may depose 'for all.'—(Mitākṣara.)

‡ When one of the parties is a female, then alone female witnesses are admissible.—(Medhā.)

§ These are to be regarded as competent witnesses only when they have been cited as such by the parties; those who come and volunteer to give evidence are not real witnesses.-(Medhātithi on Manu 8. 52.)

90. Descendants of a noble race, virtuous, wealthy, sacrificers, zealous in the practice of austerities, having male issue, well-versed in sacred law, studious, veracious, learned in the three Vedas and aged—shall be witnesses.—(Viṣṇu 8. 8.)

91. Shrotriyas, men of unblemished form, of good character, men who are holy and love truth, are fit to be witnesses,—or any men can bear testimony for any other * men.—Women shall be witnesses regarding women; twice-born men, regarding twice-born men of the same caste; good Shūdras for Shūdras and men of low birth for low-caste men.—(Vashiṣṭha 16. 25—30).

92. Men of the four castes who have sons may be witnesses; excepting Shrotriyas, the king, ascetics, and those who are destitute of human intellect.—(Baudhāyana 1. 19. 13.)

93. A person who is possessed of good qualities may be called as a witness and shall answer the questions put to him according to the truth.—(Āpastamba 2. 11. 29. 7.)

94. In the case of anything done in the interior of a house or in a forest,—or in a case of injury to the body,—any person who may have seen it with his eyes—may give evidence.—(Manu 8. 69).

95. In the event of proper witnesses not forthcoming, evidence may be given by a woman, by a minor, by an aged person, by a pupil, by a relative, by a slave, or by a servant.—The deposition of these persons is to be rejected as false only if it is found to be incoherent, or bears signs of corruption.—(Manu 8.70-71).

96. In cases of violence, theft, adultery, defamation and hurt the competence of witnesses shall not be examined too strictly.—(Manu 8. 72, Nārada 1. 189.)

97. In cases of adultery, theft, assault, defamation and crimes, all men can be admitted as witnesses.†—(Yājña. 2. 72.)

* These are admissible as witnesses only when they are found to be free from such disqualifications as prejudice, wickedness and so forth.—(Aparārka, p. 671.) Women are admissible only in cases where they can be questioned immediately, on the spot, before any one has had time to tamper with their too susceptible mind.—(Medhā. 8.70.)

† 'Sāhasa' stands for *murder* here; though the name includes theft, defamation and assault also, yet these, being mentioned by themselves, cannot be included in 'Crime' 'Sāhasa.'—(Aparārka.)

Theft and the rest, mentioned separately, are meant for such of these acts as are done secretly; and '*Sāhasa*' stands for all those acts when done openly in defiance of all laws and restraints.—(Mitā). This implication is accepted by Aparārka also.

Vishvāmitra notes that what is implied is that only eye-witnesses are admissible as evidence, in cases of theft, etc.

98. In suits of grave character, slaves and other incompetent witnesses may be admitted.—(Nārada. 1. 188.)

99. A slave, one who is blind, or deaf, or leprous, women, children, aged persons—these have been held to be competent witnesses in criminal cases, if they are not prejudiced.—(Ushanas in Mayūkha, p. 37.)

PERSONS WHO CANNOT BE WITNESSES

100. Those persons should not be made witnesses who are not trustworthy, or who neglect their duties; nor the covetous; nor those who have an interest in the suit*; nor familiar friends and companions or enemies (of the parties), nor persons formerly convicted of perjury, nor persons suffering from severe illness, nor those tainted by mortal sin.—The king† cannot be made a witness, nor mechanics and actors, nor a Shrotriya, nor a student of the Veda, nor an ascetic retired from the world;—nor one wholly dependent, nor one of bad fame, nor a *Dasyu*, nor one who follows forbidden occupations, nor an aged man, nor an infant, nor a single man, nor a man of the lowest castes, nor one deficient in a sense-organ,—nor one extremely grieved, nor one intoxicated, nor a lunatic, nor one tormented by hunger or thirst, nor one oppressed by fatigue, nor one tormented by love nor a wrathful man, nor a thief.—(Manu 8.63—67.)

101. Incompetent witnesses have been declared to be of five kinds.—Excluded (1) by a text of law, (2) on account of depravity, (3) on account of contradiction, (4) on account of uncalled-for deposition and (5) on account of intervening decease.—Learned Brāhmaṇas, devotees, aged persons and ascetics are those excluded by the text of law.—Thieves, robbers, dangerous characters, gamblers, and assassins are incompetent on account of depravity.—If the statements of witnesses summoned by the king do not agree, they are rendered incompetent by reason of contradiction.—He who, without being cited as a witness,

* Persons having money-dealings with either of the two parties.—(Medhā.)

† If the king were to give evidence, he would be regarded as partial. Artisans and the rest are likely to suffer in business if they gave evidence for or against people.—(Medhā.)

volunteers to make a deposition, is unworthy to be a witness.—If the claimant happen to die, the witness previously cited by him is rendered incompetent by reason of decease.—(Nārada 1. 157—162.)

102. Those persons should not be examined as witnesses who are interested in a suit; nor friends, nor associates, nor enemies (of the parties),* nor notorious criminals, nor persons tainted with a mortal sin.—Nor a slave, nor an impostor nor one not admitted to Shrāddhas, nor a superannuated person, nor a woman, nor a child, nor an oil-presser, nor one intoxicated, nor a lunatic, nor a gambler, nor one who sacrifices for a village-community.—Nor one engaged in a long journey, nor a merchant travelling over transmarine countries, nor an ascetic, nor one sick or deformed, nor a single person, nor a learned Brāhmaṇa, nor one who neglects religious duties, nor a eunuch, nor an actor.—Nor an atheist, nor an apostate, nor one who has forsaken his wife or his fire, nor one who makes illicit offerings, nor an adversary, nor a spy, nor a relative, nor a uterine brother.—Nor one who has been proved to be an evil-doer, nor one who lives by poison, nor a snake-catcher, nor a poisoner, nor an incendiary, nor a ploughman, nor the son of a Shūdra woman, nor one who has committed a minor offence.—Nor one oppressed by fatigue, nor a ferocious man, nor one who has relinquished all worldly desires, nor one who is penniless, nor a member of the lowest castes, nor one leading a bad life, nor a student before completion of his study, nor an oilman, nor a puller of roots; —nor one possessed by an evil spirit, nor an enemy of the king, nor a weather-prophet, nor an astrologer, nor a malicious person, nor one self-sold, nor one who has a limb too little, nor one who makes a living by his wife;—nor one who has black nails or black teeth, nor one who betrays his friends, nor a rogue, nor a wine-dealer, nor a juggler, nor an avaricious man, nor an enemy of trading companies or of guilds;—nor one who takes animal life, nor a leather-manufacturer, nor a cripple, nor an outcast, nor a stager, nor a quack, nor an apostate, nor a robber, nor a king's attendant;—nor a Brāhmaṇa who sells human beings, cattle, meat, bones, honey, milk, water or butter; nor a member of a twice-born caste addicted to usury;—nor one who neglects his

* Friends, enemies and persons of proved dishonesty are not admissible in any case.—(Medha. Manu 8. 71.)

duties, or the head of a caste or guild ; nor one who serves low people, nor one who quarrels with his father, nor one who causes dissension.—(Nārada 1. 177—187.)

103. The mother's father, the father's brother, the wife's brother and maternal uncle, a brother, a friend and a son-in-law —are inadmissible as witnesses in all disputes.—Persons addicted to adultery or to drinking, gamblers, those given to calumniating people, the insane, the suffering, the violent person and the ambitious cannot act as witnesses.—(Bṛhaspati 7.7. 29-30.)

104. The king cannot be made a witness, nor a learned Brāhmaṇa, nor an ascetic, nor a gambler, nor a thief, nor a person not his own master, nor a woman, nor the perpetrator of violence, nor one over-aged, nor one intoxicated or insane, nor a man of evil fame, nor an outcast, nor one tormented by hunger or thirst, nor one suffering under calamity, nor one wholly absorbed in evil passions ; —nor an enemy or a friend, nor one interested in the suit, nor one who does forbidden acts, nor one formerly perjured, nor an attendant ; —nor one who, without being cited voluntarily offers himself as a witness ;—nor can one man alone be made a witness.—In cases of theft, violence, abuse or assault, the character of the witnesses should not be examined too strictly.—(Viṣṇu 8. 1—6.)

105. *Women, minors, aged persons, gamblers, persons intoxicated, insane or accused of serious crime, actors, unbelievers, forgers, those deficient in organs, outcasts, a friend, one interested in the suit, a partisan, enemies, thieves, a bravado, one proved to have perjured himself, one abandoned (*by relations*, acc. to Mitā. ; *by all cultured men*, acc. to Aparārka) ; such persons cannot be witnesses.—Yājña. 2. 70-71).

KINDS OF WITNESSES

106. There are eleven kinds of witnesses : Five 'appointed' (*i.e.*, cited by the parties) and six 'unappointed' (not

* Persons meant to be excluded are those in whose cases there is reason to believe, either that they could not have properly seen what happened, or that they are unable to depose rightly; the list is not therefore exhaustive, it is only illustrative.—(Vishvarūpa. Yājña. 2. 70. 71)

cited by the parties).—(1) a subscribing witness, (2) one who has been reminded, (3) a casual witness, (4) a secret witness, (5) an indirect witness; these are 'cited' witnesses.—The six witnesses 'not cited' are—(1) co-villagers, (2) the Judge, (3) the King, (4) one acquainted with the affairs of the two parties, (5) the Agent of the claimant and (6) Family-members.—(Nārada 1. 149–152.)

107. (1) A 'written' witness, (2) one 'made to be written' in the body of the document,* (3) a secret witness, (4) one who has been reminded, (5) a family-witness, (6) a messenger, (7) an accidental witness, (8) an indirect witness, (9) a strange witness, (10) the King, (11) the Judge, (12) co-villagers: these are the twelve kinds of witnesses.—He is called a 'written witness' who enters in the deed his own as well as his father's caste, name and place of residence.—(2) He is called 'one made to be written' who has been distinctly entered in the deed, together with the details of the agreement, by the Plaintiff when writing the contract.—(3) He is called a 'secret witness' who is made to listen to the speeches of the debtor, standing concealed behind a wall and relates them as heard, in court.—(4) He is called 'one reminded' who, after having been cited and invited to be present at a transaction, is repeatedly reminded of it.—(5) He is designated a 'family witness' who is cited by both parties to witness a deed of partition, gift or sale,—being related to, and on good terms with, both parties, and acquainted with the rules of duty.—(6) He is denominated a 'messenger' who is a respectable man, esteemed and cited by both parties, and has come to listen to what is transpiring between them.—(7) He is an 'accidental witness' who happens to approach, by chance, the place where the transac-

---

No special significance attaches to the enumeration of those numerous qualities either here or under the preceding section;—all that is meant is that the witnesses should be such as could be relied upon to give correct evidence—(Vīra.-Vya., p. 149.) Persons quarrelling with their fathers are not admissible as witnesses.—(Shaṅkha in Mitākṣarā 2. 68.)

* (1) One whose name has been entered at the instance of the creditor; (2) whose name has been entered at the instance of the debtor requested by the creditor.—(Mayūkha, p. 34.)—'The only difference between (1) and (2) is that while (1) writes down his own name himself, that of (2) is actually written in the document by some one else.'—(Vīra-Vya., p. 145.)

tion is taking place.—(8) That witness is called 'indirect' who communicates what he knows to another man, at a time when he is going abroad, or lying on his death-bed; he also is called an 'indirect witness' who repeats from his own hearing and from hearsay, the previous statements of actual witnesses.—(9) He is called a 'strange witness' to whom an affair has been entrusted or communicated by both parties, or who happens to witness the transaction surreptitiously.—(10) The king in person having heard the statements of the parties, may act as witness, if a dispute arises subsequently.—(11) If after the decision of a suit, a fresh trial should take place, the Judge, together with the assessors, may act as witnesses in that trial, but not in any other case.—(12) The people of the village may give testimony, even without being cited,—specially as to damages in boundaries.—(Bṛhaspati 7. 1–15.)

108. If a witness dies or goes abroad after giving evidence, those who have heard him may give evidence; as indirect evidence makes evidence.—(Nārada)1. 166.) The 'subscribing' witness retains his validity, even after the lapse of a long time; the deposition of a witness 'reminded' remains valid up to the eighth year; that of the 'casual' witness up to the fifth year; —that of the 'secret' witness, up to the third year;—that of the 'indirect' witness, for one year.—(Nārada 1. 167—169.)

109. Or, no definite limit can be fixed for judging a witness: a witness whose understanding, memory and hearing have never been deranged, may give evidence even after the lapse of a considerable time.—(Nārada 171—172.)

110. There are two kinds of witnesses—(1) *appointed* and (2) *not appointed*; the former is one whose name has been entered in the document, and the latter is one who is not so entered.—(Prajāpati in Aparārka, p. 666.)

111. [Like the king and the judge] Members of the Court also are admissible as witnesses.—(Kātyāyana in Mayūkha, p. 34.)

Number of Witnesses

112. The number of witnesses should be at least *three*.—(Yājña. 2. 69; Manu 8.60.)

113. There should be nine, seven, five, four or three witnesses: or two only, if they are learned Brāhmaṇas. But the king shall never admit only one witness.—Of 'subscribing' and 'secret' witnesses, there should be two of each sort; of 'spontaneous' 'reminded,' 'family' and 'indirect' witnesses, there should be three, four or five of each kind.—A single witness also may furnish valid testimony, if he is a 'messenger,' or an 'accidental' witness or the king or the judge.—(Bṛhaspati 7. 16—18.)

114. Witnesses should be many in number.—(Gautama 13. 2.)

115. One man alone cannot be a witness.—(Viṣṇu 8.)

116. *Even a single witness is admissible, if he is accepted by both parties and is conversant with Dharma 'a proper performer of all religious duties' (Mitā.), or 'highly qualified' (Vishvarūpa) (Yājña. 2. 72.)

117. By the consent of both parties, even a single person may be admitted as witness; he must be examined in public as a witness.—(Nārada 1. 192.)†

118. One whose conduct is pure, who knows the Law, who is known to be veracious, may be admissible as witness, even alone by himself,—specially in criminal cases.—(Vyāsa in Mayūkha, p. 35 and Vīra.-Vya., p. 150.)

119. Even a single person may be a witness in the case of a deposit made secretly in his presence;—as regards things borrowed for use, even a single person through whom the thing has been sent may be enough as witness.—(Kātyāyana in Mayūkha, p. 35.)

120. Even one man free from covetousness may be accepted as witness.—(Manu 8. 77.)

Conflict among Witnesses

121. On a conflict among the witnesses, the King shall accept as true the evidence of the majority; in case of their being equal in number, that of the better qualified witnesses;

* This means that *two* also are admissible.—(Mitā.)

† All such texts refer to cases where both parties consent to rely upon a single witness.—(Parā. Mādhava-Vya., p. 66.)

on a conflict among the highly qualified, "preference is to be given to the higher caste."—(Medhā.); –'best of the twice-born,' *i.e.*, Brāhmaṇas (Govindarāja and Nārāyaṇa);—'righteous Brāhmaṇas' (Kullūka and Rāghavānanda).— Manu 8. 73.)

122. The evidence of the best of the twice-born shall be accepted.—(Viṣṇu 8. 39.)

123. In cases of conflict the evidence of the majority should be accepted; when the numbers are equal on both sides, the evidence of the better qualified men shall be accepted; when there is difference among these, then those of the best qualified amongst them.—(Yājña. 2. 78.)

124. Even after the deposition of all the witnesses has been taken, if other and better qualified witnesses—or witnesses double the number of the former witnesses,—should depose to the contrary, the former evidence should be rejected as *false*.*—(Yājña 2. 80.)

125. In a dispute about a house or a field, reliance may be placed on the deposition of neighbours.—If the neighbours disagree, documents may be taken as proof.—If conflicting documents are produced, reliance may be placed on the statements of aged persons in the village or town, and on those of friends and corporations.—(Vashiṣṭha 16. 13—15.)

126. If there is conflicting evidence, the majority of witnesses decides the matter. If the number of witnesses is equal on both sides, the testimony of those should be accepted as correct whose veracity is not open to suspicion. If the number of such witnesses is equal on both sides, the testimony of those should be accepted who are possessed of superior memory.—When even such witnesses are equal on both sides, the evidence of the witnesses is entirely valueless.—(Nārada 1. 229-230.)

127. If the witnesses disagree with one another regarding place, age, matter, quantity, shape and kind,—such testimony is worthless.—(Nārada 1. 233.)

---

* Aparārka and Mitākṣarā both explain that this rule is not inconsistent with the rule that witnesses cannot be accepted *after judgment has been delivered* (Nārada 132 below); as the present rule admits of additional evidence only after the deposition of witnesses has been finished;—*if the judge is not quite satisfied with the evidence already adduced*,—this is added by the Mitākṣarā.

128. If the statements of witnesses do not agree, they are rendered incompetent.—(Nārada 1. 160.)

129. In cases of conflict among witnesses, the testimony of the majority should be accepted ; when the number is equal on both sides, the testimony of the more virtuous ones should be accepted : when the virtuous ones are equally divided, the testimony of those shall be accepted who are eminent for the performance of religious acts : when these latter are equally divided, then the testimony of those with superior memory shall be accepted.—(Bṛahaspati 7. 35.)

Admissible Evidence

130. Evidence in accordance with what has been heard or seen *directly* (Medhā.) is admissible.—(Manu 8. 74.)

131. When a man, not originally cited as witness, sees or hears anything and is afterwards examined regarding it, he must declare it exactly as he saw or heard it.—(Manu 5. 76.)

132. What witnesses declare naturally, 'not out of compassion, or with a view to acquiring merit,' (according to Medhā.) ;—' not out of fear and the like,' (according to Kullūka) ;—' without hesitation ' (according to ' others ' in Medhā.)—that should be admitted as evidence ; depositions of other kinds are worthless.—(Manu 8. 78.)

133. After the suit has been decided, the adducing of any further evidence—documentary or oral—would be futile, if it has not been cited before.—(Nārada in Mitā. on 280.)

134. If a man relies upon weaker proof and neglects the stronger one, he is not entitled to adduce the latter, after the suit has been decided.—(Kātyāyana in Mitā.)

135. When a witness has been cited by one party, he is not to be approached in secret by the other party.—(Nārada 1.165.)

Where no Witnesses are Available

136. If no witnesses are available, and the Judge is unable to ascertain the truth, recourse should be had *to Shapatha* (oaths) [' supernatural proofs ' according to Medhātithi].—(Manu 8.109.)

137. When, owing to the negligence of the creditor, neither documentary nor oral evidence can be adduced,—and the other party denies the obligation, three different methods may be adopted :—(*a*) timely reminder, (*b*) exhortation and argument, and (*c*) oath.—(*a*) If on being reminded of the debt, the debtor does not repudiate it,—and this has been done three or four or five times,—then he may be compelled to pay it.—(*b*) If the debtor refuses the demand, he shall be exhorted with arguments relative to place, time, matter, amount, contents and so forth.—(*c*) If these are of no avail, recourse should be had to Oaths (ordeals).—(Nārada 1. 235—239.)

WHERE WITNESSES ARE NOT NECESSARY

138. In the following cases, no witness is necessary : One who is caught carrying a fire-brand must be taken as the incendiary ; one who is caught with a murderous weapon in his hand must be the murderer ; when a man and woman are found to be embracing each other, the man must be an adulterer.—One who goes about with a hatchet in his hand should be regarded as the destroyer of bridges. One carrying an axe may be taken as a feller of trees.—In some cases, people make marks upon their body with a view to fasten a charge of assault on an enemy ;—in such cases recourse is to be had to inductive reasoning, ascertainment of facts and stratagems for getting a reliable test.—(Nārada 1. 172—176).

LYING PERMISSIBLE

139. In some cases, a man who, though knowing the facts, gives false evidence from a pious motive, does not lose heaven ;—whenever the death of a Shūdra, of a Vaishya, of a Kṣattriya, or of a Brāhmaṇa would be caused by a declaration of the truth, a falsehood may be spoken ; in such cases falsehood is perferable to truth.*—(Manu 8. 103-104.)

140. In a case where the death of any man of the four castes is likely to result from telling the truth, one may depose

*But an expiatory rite has to be performed (8. 105). Hence what is asserted here is mere *arthavāda*, not to be taken as enjoining the telling of a lie—says Prāyashchittaviveka, p. 432. What is meant is that *silence*, even *lying*, would be better than telling the truth, under the circumstances—(Vīra ; Vyav. 53a).

falsely.—(Yājña. 2. 83). *(a)* Or he may not depose at all in cases where the truth would lead to the death of one party, and untruth to that of the other ;—if the king insist on his deposing, the man should depose in such a manner as to render it futile one way or the other ;—if even this be not possible, then he must tell the truth ;—if this leads to the death of anybody, the witness may perform the necessary expiation.—(Mitā.)

141. Let him preserve, even by telling a lie, a Brāhmaṇa who has sinned once through error and is in peril of his life.—(Bṛhaspati 7. 34.)

142. No guilt is incurred by giving false evidence, in case the life of a man depends thereon.—But this rule does not hold good if the life of a very wicked man depends on the evidence.—(Gautama 13. 24-25.)

SIGNS OF A FALSE WITNESS

143. One who, weighed down by the consciousness of his guilt, looks as if he was ill, is constantly shifting his position and runs after people ;—who walks about irresolutely and aimlessly and draws repeated sighs, who scratches the ground with his feet and shakes his arms and clothes ;—whose countenance changes colour, forehead sweats, whose lips become parched, who looks about and above himself ;—who makes long irrelevant speeches, without being asked ;—such a person is to be recognised as a *false witness* and admonished accordingly.*—(Nārada 193—196.)

144. By external signs shall the king discover the internal disposition of men,—by their voice, their colour, their movements, their aspect, their eyes and their gestures.—(Manu 8. 25.)

145. The man who moves from place to place, licks the ends of his mouth,—whose face changes colour, whose mouth becomes parched, who speaks haltingly, who speaks much and inconsistently, who pays no attention to what is said to him, who does not look towards others, who twists his lips, whose mind, body and acts are found to undergo a change ;—such a

* For showing such signs, the witness need not be punished, because the nervousness evinced may be due to dread and such other natural causes, and not necessarily to consciousness of guilt.—(Nārada 193, p. 196.)

person —whether a witness or an accused—should be regarded as unreliable.*—(Yājña. 2. 13—15.)

146. A false witness may be known by his altered looks, by his countenance changing colour and by his talk wandering from the subject.—(Viṣṇu 8. 187.)

147. Whatever faults there may be in witnesses should be exposed at the time of the trial; those cannot be treated as valid objections which are urged afterwards.—(Bṛhaspati 7. 25.)

148. The incompetence of witnesses should be exposed by the defendant in the court itself ; if the witnesses admit of the points raised, they cease to be witnesses; if they do not admit them, the points have to be proved by the defendant. If the latter fails to prove them, he should be fined. —(Vyāsa in Mayūkha, p. 38.) The fine shall be the first amercement. —(Kātyāyana in Mayūkha, p. 39.)

149. Those faults of the witnesses that are known to the Assessors,—or those that are quite perceptible,—should be accepted by the judge, without their being proved by the defendant.—(Vyāsa in Mayūkha, p. 38.)

PUNISHMEMT FOR PERJURY

150. He who commits perjury through covetousness shall be fined one thousand *Paṇas* †;—if through ‡ distraction, the lowest amercement;—if through fear, two middle amercements;—if through friendship, four lowest amercements—if through lust, ten lowest § amercements,—if through wrath, three || second amercements ;—if through ¶ ignorance, two

---

* All these signs only indicate the possibility of the man being unreliable ; they do not absolutely prove him to be so.—(Mitā. and Aparārka.)

† These are *Kārṣāpaṇas*. —(Aparārka, p. 680.)

‡ '*Moha*'—wrong information (Mitā. 2.81)—absent-mindedness.— (Kṛtyakalpataru.)

§ 2,500 *Paṇas*.—(Kṛtyakalpataru.)

|| 1,500 *Paṇas*.—(Kṛtyakalpataru).

¶ *Ajnāna*—indefinite knowledge (Vīra.-Vya., p. 180), or an error of judgment at the time of deposing.— (Kṛtyakalpataru.)

hundred;—if through * childishness, one hundred *paṇas*.—† The King shall fine and banish men of the three lower castes who have given false evidence—but a Brāhmaṇa he shall only banish.—‡ (Manu 8. 120—123.)

151. A witness should be reprimanded and punished for speaking an untruth.—(Gautama 13. 23.)

152. If a witness is found to be speaking an untruth, the king shall punish him.—(Āpastamba, 2. 11—29. 8.)

153. § Witnesses who have perjured themselves should be severely punished with a fine which shall be double the value of the suit, but the Brāhmaṇa should be banished.—(Yājña. 2. 81.)

154. If after having deposed, a witness is found to suffer|| within a week, from fire or death in the family,—he should be made to pay the debt in dispute, as also a fine.—(Manu 28. 108.)

WITHHOLDING EVIDENCE

155. A witness who, without being ill, ¶ does not appear to give evidence in cases of loans and the like, within three fortnights after the summons, shall be held responsible for the whole debt ** and pay a tenth part of the whole as fine †† to the king.—(Manu 8. 107.)

---

* '*Bālishya*'—want of experience and knowledge (Mitā, 2. 81); majority just attained (Kṛtyakalpataru)—absence of all knowledge (Vīra.).

† This rule is meant for repeated offence (Mitā. 2. 8:—the preceding rule being meant for the first offence.—(Medha. and Vīra.)

‡ *Pravāsayet*—Put to death (Medhā. and Mitā. 2. 81), such as cutting the lips, or the tongue and so forth, according to the gravity of the cases in which the man may have given false evidence.—(Ibid—also Vīramitrodaya-Vyav.)

'*Vivāsayet*'—deprive him of his clothes (Medhā, Mitā 2-81, or 'of his house' (Ibid).—'Banished with all his belongings.'—(Vīvādachintāmaṇi, p. 191.)

§ Mitākṣarā and Aparārka take the word *Kūṭakṛtsākṣiṇaḥ* to mean 'the perjured witness and the party that has bribed him to do it.' It is added that this rule applies to the *first* offence; in the case of repeated offence, the penalties are as prescribed by Manu above 8. 120—123)—Aparārka adds the *forger* also is included under '*Kūṭakṛt*'

|| Any acute suffering.—(Medhā.)

¶ This indicates other disabilities also,—such as family-troubles, dread of the creditor and so forth.—(Medhā.)

State-oppression and Divine oppression are also meant.—(Mitā. 2. 76.)

'Obstacles arising from natural causes or from some action of the king'—(Vīra-Vyava., p. 54. Cf. also Mitā. 2. 76.)

** Including interest.—(Smṛtichandrika-Vya., p. 213.)

†† That is, the fine that would be payable by the defeated party should be paid by the recalcitrant witness.—(Medhā.)

156. A man who does not give evidence should be made by the king to pay up the whole amount of the debt along with accrued interest, and also a fine consisting of the tenth part of that amount,—on the forty-sixth day after the receiving of summons.—(Yājña. 276.)

157. If a man has been cited as a witness, and the questions have been addressed to him, if he tries to dissuade other witnesses from giving evidence by telling them that he himself is not going to give evidence,—he should be fined eight times the fine laid down for recalcitrant witnessss; but the Brāhmaṇa* shall be banished †.—(Yājña. 282.)

158. He who conceals his knowledge at the time of the trial, although he has previously related what he knows to others, deserves specially heavy punishment,—being more criminal than a false witness.—(Nārada 1. 197.)

159. If a witness, being summoned, does not appear, without being ill, he should be made to pay the debt and a fine after the lapse of three fortnights.—(Bṛhaspati 7. 31.)

160. If on being questioned, the witnesses do not answer, they are guilty of an offence.—(Gautama 13. 6.)

EXAMINATION OF WITNESSES

161. In the presence of deities and Brāhmaṇas, during the forenoon, the Judge, pure himself, shall ask the town-born persons who have been purified and are facing the North and the East, to give evidence.—(Manu 8. 87.)

162. The witnesses being assembled in the court in the presence of the two parties, the judge shall examine them, exhorting them in the following manner :—'What you know to have been mutually transacted in this matter between the two men before us,—declare all that in accordance with the truth;—for you are witnesses in this cause.—A witness who speaks the truth in his evidence, gains after death the most excellent re-

* 'Who is unable to pay the said heavy fine.'—(Mitā.)

† '*Vivāsana*'—may be depriving of clothes, demolition of his house, or banishment,—according to the gravity of the suit involved.—In the case of men of the other castes, if any one is unable to pay the heavy fine, he shall be made to work according to his caste, or put in chains or in prison.—(Mitā.)

gions of bliss, and unsurpassable fame while living; such testimony is respected by Brahmā himself.—He who gives false evidence is firmly bound in Varuṇa's fetters, etc., etc.—(Manu 8. 79 et seq.)

163. Some people declare that the witnesses shall be charged on oath to speak the truth.—(Gautama 13. 12.)

164. When the witnesses have been assembled near the Plaintiff and the Defendant, they shall be charged as follows:—'If a man gives false evidence, he goes to those regions that have been ordained for sinners and perpetrators of heinous crimes, for incendiaries, and murderers of women and children;—whatever spiritual merit thou mayest have acquired by means of hundreds of good deeds in thy previous lives—know that all that shall go over to the party against whom thou givest false evidence.'—(Yājña 2. 73—75.)

165. In cases bearing upon the death of animals, the witnesses should be examined in the presence of the dead body.—(Kātyāyana in Vira-Vya., p. 168.)

166. Witnesses shall be examined after they have been bound down firmly by oaths.—(Nārada 1. 168.)

167. The judge shall cause the Brāhmaṇa to swear* by his veracity, the Kṣattriya by his chariot or the animal he rides, and by his weapons,—the Vaishya by his kine, grain and gold, and the Shūdra by the guilt of all grievous sins;—or recourse may be had to ordeals.—(Manu 8. 113-114.)

168. To what the witnesses have seen collectively, they shall depose collectively; to what they have seen severally, they shall depose severally.—(Vashiṣṭha in Vīra.-Vya., p. 168.)

169. Whenever false evidence is found to have been given in any suit, the judge shall reverse the judgment, and whatever may have been done shall be annulled.†—(Manu 8. 117.)

---

* 'Swearing' here stands for the invoking of evil consequences upon oneself; hence 'swearing by truth' means 'may all my merit due to truthfulness become annulled.'—(Medhā.)

The form of the oath taken by the man shall be in the form—'What I shall say shall be the truth.'—(Smṛtitattva II, p. 611.)

† 'Even though the case may have been decided, yet if, even subsequently, it be found that false evidence had been given, the decision shall be reversed.'—(Mitā. 2. 77.)

170. Evidence given from covetousness, distraction, terror, friendship, lust, wrath, ignorance and childishness is declared to be invalid.—(Manu 8. 118 ; also Viṣṇu 8. 40.)

Possession—Bhoga

POSSESSION IS PROOF

171. What has been possessed in order, and with a legitimate title, the possessor may keep ; it can never be taken from him.—(Viṣṇu 5. 185.)

172. If a dispute arises between two creditors concerning an immoveable property which has been mortgaged to both at the same time,—that mortgagee shall enjoy its produce who holds it in possession without having obtained it by force.—(Viṣṇu 5. 184.)

173. In regard to houses and lands,—the property belongs to him who has the possession ; document is of no avail in that case.*—(Samvarta, quoted in Parāsharamādhava-Vya., p. 108.)

KINDS OF BHOGA

174. Possession is of two kinds—(*a*) with title and (*b*) without title. That which has continued for three generations is self-sufficient ; that which is of shorter duration should be supported by title.†—(Kātyāyana in Parāsharamādhava-Vya., p. 103.)

'Even though the creditor has received the amount of debt claimed, he should be made to refund it, and the fine realised from the debtor shall be refunded to him.'—(Medhā.)

* This only emphasises the futility of the document ; it does not mean that the Possessor acquires ownership by mere Possession ; as mere Possession can never create ownership ; as laid down by Kātyāyana (see below, p. 121 et seq).—(Parāsharamādhava-Vya., p. 108.)

† Possession which has continued for three generations is proof, even when not supported by Title ; but if it is of shorter duration, it can be admitted as proof only when supported by title. 'Three generations' stand for a period of sixty years or more (see below).—(Parāsharamādhava-Vya., p. 103.)

RELATIVE IMPORTANCE OF ĀGAMA (TITLE) AND BHOGA (POSSESSION)

175. There can be no branches without the root; Title is the root, and Possession is the branch.*—(Kātyāyana in Parāsharamādhava-Vya., p. 102.)

176. Where Possession is evident, but no sort of title is perceptible, there Title, not Possession, shall be the proof.†—(Manu 8. 200.)

177. ‡ Title is superior to Possession, § except in cases

---

* This means that Possession can be proof only when supported by Title.—(Parāsharamādhava, p. 102.)

In the determining of ownership Title along with ownership is proof, not mere Possession—such is the sense of this text.—(Aparārka, p. 635.)

† In regard to cattle, gold, lands and the rest, if one man is found in possession, while Title arising from gift and other sources indicates the ownership of another,—it is Title that is more authoritative, and mere Possession is no proof of ownership. The immutable rule is that Possession does not create ownership; what sort of Possession does create ownership has been described in Manu 8. 147 (see below).—(Medhātithi.)

Document, Witnesses and Possession having been described as Proof, the author proceeds to explain their relative strength—(*a*) In first generation, Title proved by means of witnesses is superior to Possession;—(*b*) in the fourth generation, Hereditary Possession, or Possession for generations, is superior to Title proved by means of Documents;—(*c*) in the intervening generations (second and third), Title accompanied by even slight possession is superior to Title entirely without Possession.—(Mitā.)

‡ This is the *second* alternative explanation of the text, given by the Mitākṣarā. The first explanation is as follows:—

As proof of ownership Title is superior to Possession; because in determining ownership Possession requires the support of Title; mere Possession does not indicate ownership; as Possession can be based on force also.—This rule refers to 'time within memory' (see below).

§ *Except, etc.*—In some cases Possession is proof, even independently of Title, *e.g.*, in cases where possession has continued through three generations (father, grandfather and great-grandfather), it is proof, even without Title, *i. e.*, without *knowledge of Title*. This also has reference to 'time within memory.' Thus then, the meaning is that in cases referring to 'time within memory,' as it is possible to be sure of the non-existence of Title, Possession as proof, depends upon the knowledge of Title; but when it refers to 'time beyond memory,' as it is not possible to be sure of the non-existence of Title, continued Possession is proof, independently of knowledge of Title. 'Time within memory'—is a period of a hundred years. Hence in cases referring to a period of time prior to the last hundred years, if it is proved that during all the time, of over 100 years, possession has continued without protest from, and before the eyes of, the other parties concerned,—and the non-existence of Title being uncertain, the validity of the Possession remains unopposed,—such Possession is accepted as indicative of Title and hence of ownership.—But in cases dealing with 'time beyond memory' also,—if there has all along been a continuous notion that the possession is without title, then such Possession cannot be admitted as proof.—In fact it is only when continued Possession is supported by Title indicated by other proofs that, in course of time, it indicates ownership. But Title, even though recognised,—if it is not supported by Possession,—cannot indicate ownership, after the lapse of time; as it is just possible that though the man may have had title over the property he might have renounced it during the intervening time, by sale or gift, etc.

where Possession has continued for generations.*—There is no strength (completeness, perfectness) in the Title, if there is not even a little of Possession.—(Yājñavalkya 2. 27.)

178. Even when the Document is there, and witnesses are living to prove it, if there is no possession, there is no stability (to the title) ; specially in the case of immovable property.—(Nārada quoted in Vīramitrodaya-Vya., p. 207.)

179. At first the source of ownership is Gift (and Purchase and the rest) ; in the middle, it is Possession accompanied by title ; and in the end the only source of ownership is Possession which is continued and long-standing.†—(Nārada quoted in Mitā. but attributed to Kātyāyana, in Aparārka.)

---

* Hence that Title which is not supported by even a slight degree of Possession, is not *strong*, not perfect, is deficient.—(Mitā.)

What is meant is that if there is no form of Possession, the Title is deficient in its validity.—(Vīramitrodaya-Vya., p. 207.)—'*Except, etc.*'—the meaning is that Title is superior to such Possession as has continued only during 'time within memory'; mere Possession, without Title, not being productive of ownership. If it has continued during 'time beyond memory,' there can be no certainty as to there being no title behind it; hence in that case Possession, continued and uncontroverted, does indicate ownership.—(Vīramitrodaya-Vya., p. 207.)

Twenty or Thirty or Forty years constitute 'one generation.'—(Parāsharamādhava-Vya., p. 104.)

(*a*) Mere Possession, without Title, cannot prove the ownership of the Possessor over the property possessed by him ; because in the case of the enjoyment of the usufruct, we find such enjoyment even without actual ownership. (*b*) Possession needs the support of Title in the case of property other than those that have been possessed for several generations. (*c*) In a case where there is absolutely no trace of possession, no validity attaches to mere Title. What is meant is as follows :—Even though it may be established by means of documentary and other evidence that originally the man has had a perfectly clear title derived from gift or such other valid sources, yet *present* ownership cannot be proved without Possession ; because it is just possible that the ownership may have been surrendered, during the interval, by means of gift or sale. Therefore in the proving of *present* ownership, Title needs the support of Possession.—(Aparārka.)

(*a*) 'Title'—Document—' is superior to Possession'; hence Document is definite as proof of ownership, while Possession is possible even without ownership. (*b*) But if the Possession has continued for generations, it is superior. '*Purvakrama*' of the Text, stands for *Possession during three generations.* (*c*) Documentary Title is *deficient*, if not supported by such degree of Possession as is essential for establishing the validity of the Title.—(Vishvarūpa.)

Even though Gift, Purchase and the rest are self-sufficient as sources of ownership, yet some sort of Possession is needed to establish it firmly. Because a gift, for instance, is not complete without acceptance on the part of the donee : and such acceptance should be mental, verbal as well as physical ; and physical acceptance of a gift means *enjoyment*, which implies some sort of Possession.—(Vīra.-Vya., p. 207.)

† The meaning is that in the fourth generation, possession is the only proof that is to be adduced in proof of ownership ; but the possession should be such as has continued during 'time beyond memory.'—(Aparārka, p. 636.)

This text shows what proof of ownership should be adduced by the three generations severally. By the first generation, Title ; by the second, Title and Possession ; by the third, only Possession.—(Parāsharamādhava-Vya., p 107.)

180.* Possession becomes 'proof' (of ownership) through pure Title.—(Yājña. 2. 29 according to Vishvarūpa, but Nārada, according to Mayūkha, p. 30.)

181. Possession should fulfil five conditions: (*a*) it should be supported by Title; (*b*) it should have continued for a long time; (*c*) there should have been no break in it; (*d*) there should have been no protest ever raised against it; and (*e*) it should be in the presence of the opposite party.†—(Vyāsa, in Mayūkha, p. 30.)

182. If a man adduce (as proof) only Possession, and not any sort of Title, he should be regarded as a thief, masquerading under the cloak of Possession.—(Nārada in Mayūkha, p. 30.)

183. ‡ In cases falling within the memory of man, the proof (of ownership) over land is required to be *Possession with*

---

* The '*impurity*' of the Title consists in its being disputed by the opposite party' - says Nārada himself as quoted in Vira-Vya., p. 204.

The meaning of the text is that in establishing ownership, Possession depends upon Title.—(Mitā. 2. 27.)

Possession becomes a *proof* only when supported by Title which is *pure*, i.e., well-established.—(Aparārka, p. 635.)

Evidential character belongs to such Possession only as is supported by well-established Title, and not to mere Possession.—(Vishvarūpa.)

What is meant is that mere Possession cannot establish a claim. This refers to a case dealing with such time during which Title, if existent, could be remembered.—(Mayūkha, p. 30.)

Mere Possession cannot indicate ownership; as Possession may have been obtained by force or stealth.—(Mitā.)

Possession should not only be supported by Title, it should fulfil other conditions also.—(Mayūkha, p. 30.)

This refers to possession by the first generation.—(Aparārka, p. 636.)

† Possession is proof of ownership only when it fulfils all these five conditions.—(Mitā.)

The qualification that Possession should be supported by Title,—and the charge laid against the man who does not adduce Title,—all this refers to a case where it is possible for people to remember the Title if it exists. This time has been held by Mitākṣarā to consist of the period of a hundred years. But we hold that the period meant must be that during which it may be possible for the knowledge of the Title to be handed down from father to son, even through a long succession of generations.- (Vīra.-Vya.)

In cases referring to time during which it is not possible to remember the Title, mere Possession also is proof; because in such cases it is impossible to be certain that no Title ever existed.—(Mayūkha, p. 31.)

‡ If there is Possession for any period less than a hundred years, it is not valid unless Title is shown. It is a period during which it is possible to prove Title by oral testimony; as men of ninety or hundred years could be found to depose to the question as to how the Possession arose. If, therefore, no Title could be proved when Possession has been held for less than a hundred years, it may be taken for certain that no Title ever existed.

a Title.— *In cases beyond the memory of time, Possession continued successively for three generations (is proof of ownership), on account of the absence of certainty (regarding absence of Title).—(Nārada in Mayūkha, p. 30 ; Kātyāyana in Parāshara-Mādhava-Vya., p. 104 and in Mitākṣarā.)

184. A man who enjoys (possesses) a property without Title, even for many hundreds of years—should be punished like a thief.†—(Nārada 4. 87, and noted in Mayūkha, p. 31.)

---

* But in cases where Possession has continued for more than a hundred years, no witnesses could be available to depose to the origin of the Possession ; and so in such cases it could not be asserted with any degree of certainty that no Title ever existed. Hence as *immemorial Possession* and Title are always concomitant without fail, there is a presumption in favour of Title in such cases.—Some sages (*e.g.*, Vyāsa, Bṛhaspati, see above sec. 1) have held that 'time beyond memory is the period of three generations beyond the present Possessor,' *i.e.*, his father, grandfather and great-grandfather. But this also should be regarded as only indicating the period of one hundred years; because if we took 'three generations' too literally, then in some cases, it may so happen that all the three ancestors of a man may die off in the course of a single year.—(Mitā. -- as explained by *Kane* in Mayūkha, Notes, p. 58.)

'Time within memory' stands for time occupied by three generations; the period of 'possession by one generation' has been fixed by Nārada at twenty years; so that what is meant is that in cases where Possession has continued for over three generations, *i. e.*, beyond sixty years, Title is not to be sought after. In fact Katyāyana has distinctly declared that 'Possession continuing for sixty years becomes irrevocably fixed.' Hence 'time within sixty years' is time 'within memory,' and beyond sixty years is 'time beyond memory.'—Or on the strength of another Smṛti we may regard *thirty-five* years as 'one generation of Possession'; so that a hundred and five years would be 'time within memory,' and over that, 'time beyond memory.'—(Aparārka.)

Parāsharamādhava-Vya., p. 105, fixes the period at 150 years.

† Even in cases of Possession beyond the memory of men, if there is a long-continued persistence of the notion that the Possession is without Title, that Possession cannot be regarded as proof. The penalty here prescribed should be inflicted in all such cases.—This text reiterates the position that Possession without Title cannot establish ownership. - (Mitā.)

This text means that the first man who wrongly usurps without title should be fined,—his sons and grandsons should not be fined, only the property shall be taken away from them; though they may have enjoyed it very long; provided there is certainty that there was no title to begin with.—(Aparārka, p. 637.)

This view of Aparārka is not accepted by Vīramitrodaya-Vya., p. 206.

'What is meant by *Possession extending over hundreds of years* is long-standing possession by one and the same person; and such Possession cannot prove ownership unless there has been possession by his father and grandfather also. *Hundreds of years* stands for a *long period of time.* The upshot is that in the first generation of the Possessor, mere Possession, even though extending over twenty years or more, does not establish ownership; so also in the second generation.'—(Medhātithi on Manu 8. 148.)

185. Even in the absence of title, if a property has been in total possession by three ancestors, it cannot be recovered, having passed from one generation to another, for three generations*.—(Nārada 4. 91.)

186. In Law, Possession is valid if it is unbroken and longstanding. Even when broken, it should be regarded as valid, if it has been previously proved.—(Bṛhaspati in Parāsharamādhava-Vya., p. 106.)

187. Neither the first usurper nor his son should lay stress upon Possession, in the case of such property as cattle, slaves,—male and female—and so forth.†—(Kātyāyana in Mitā.)

---

*As it stands this text should go under the next heading but according to the explanation of it by commentators and digest-writers it has been placed here.

The direct literal meaning has not been accepted by the commentators or digest-writers, as a rule; because it is in direct conflict with section 173. It has therefore been explained as a figurative supplement to the foregoing: the meaning being—'when what has been wrongly enjoyed for three generations cannot be recovered, how much more impossible is it to restore what has been enjoyed for three generations, and about which there is no certainty that there was no title to begin with?' So that the present text does not lay down the impossibility of recovering what is wrongly possessed, but to declare that Possession extending over three generations does confer ownership when there is uncertainty as to the unlawful character of the initial possession.—(Mayūkha, p. 31 and Mitā. 2. 24; also Parāsharamadhava-Vya., p. 105.)

In all these texts, where Possession is mentioned as 'extending over three generations,' it is 'time within memory' that is meant.—(Vīramitrodaya and Mitākṣarā.)

'Title,' '*Nyāya*,' here stands for deed of gift and so forth. In the absence of such Title, what has been enjoyed by one's father, grandfather and great-grandfather becomes the rightful property of the fourth generation;—and this does not happen after two years only. Such is the meaning of this text.—(Medhātithi on Manu 8.147.)

† This also implies that Possession without Title does not create ownership.—(Balambhaṭṭi.)

The phrase '*atyantam āgamaṃ vinā*' of the present Text has been explained by Mayūkha (p. 3) and Mitākṣarā (2. 24) to mean 'without perceptible title,' and not as absolutely 'without title': as in the latter case it has been declared that 'Possession without any Title, even though extending over hundreds of years does not confer ownership.'—(See under sec. 180—183 above.)

Even though the first ancestor who took possession of the property may have had no title, yet as regards his descendants, if they have established their possession extending over a hundred years,—then the property cannot be taken away from the fourth descendant;—the reason for this being that after the lapse of such a long time, there can be no certainty as to there having been no Title behind the initial possession; it is only when this latter fact is quite certain that Possession can be rejected as proof of ownership. If however even after the lapse of a hundred years, it can be proved to a certainty that there never was any title behind the first possession, then Possession has to be rejected and the property taken away from the man in possession.—(Aparārka, p. 637.)

PART IV

POSSESSION THROUGH GENERATIONS ESTABLISHES TITLE

188. If Possession of an Estate has been held by three generations in due course, the fourth in descent shall retain it as his property—even without a written Title.—(Viṣṇu 7. 187.)

189. When property has been held in lawful possession by the father, the son's right to it, after his death, cannot be contested; as it has become his own by rightful possession.—(Viṣṇu 5. 186.)

190. If a property has been enjoyed (possessed), without perceptible Title, by one's three ancestors, then it cannot be taken away from him,—it having come to him, in due course, through three generations.*—(Hārīta in Mitā.; but Vyāsa in Aparārka, p. 637.)

191. That man who acquired a title over a certain property should prove it, when he is impugned and proceeded against; his son, or his son's son, is not required to prove the title; in their case, Possession is more important.†—(Yājña. 2.28.)

Vīramitrodaya (p. 2'7), agreeing with Mitākṣarā and Mayūkha, remarks—This text must be taken to refer to 'absence of such Title as existed, but cannot be produced,' that is to say, when there is no certainty as to there having been no Title at all. Ownership is established by only such Possession as fulfils certain conditions, the chief of which is that it is supported by proved Title.—Mere Title, without Possession, even though proved by witnesses, cannot establish ownership, as ownership may have been relinquished by means of sale or gift after acquisition by the Title.

* The idea is that the first acquirer, if he does not prove title, may be fined for unlawfully usurping possession: but his son and grandson cannot be fined for the wrongful act of their ancestor; they should rely upon Possession; if they can prove that, they will not incur the penalty. But this does not mean that they will retain the property; because their Possession not having ripened by continuance during three generations, they lose the property, if they cannot prove Title also, along with the Possession.—(Mayūkha—Notes—Kane, p. 62.)

† The acquirer, when questioned, should 'prove' his Title, by means of evidence, documentary and oral. This means that if the first acquirer is unable to prove his title, he should be fined. His son, however, if sued regarding the Property, should have to prove, not the Title, but only continuous unmolested Possession. So that the second generation is to be punished only if he fails to prove such Possession, not if he does not prove the Title. As regards the grandson of the acquirer, he should have to prove neither Title nor continuous unobstructed Possession, but only hereditary Possession; and it is only if he fails to prove this that he incurs penalty.—In the case of the son and the grandson, therefore, Possession is 'more important.'—But in all three cases, the possessor loses the property if he cannot prove the Title; it is only in the matter of punishment that a distinction has to be made in the three cases (see Sec. 194 below).—(Mitī.)

'*In their case Possession is more important.*'—That is, it is proof of ownership, even if Title cannot be proved. As a general rule, Possession has

192. If a person in possession is sued for the property, but before the suit is decided, he dies,—then his heir should prove the title. In this case mere Possession, devoid of Title, cannot be a valid proof of ownership.*—(Yājña. 2. 29.)

193. The first acquirer should prove, in court, Title as well as Possession :—his son should prove Possession only† :—his grandson shall have to prove nothing.—(Bṛhaspati in Aparārka, p. 636.)

194. If he who has acquired title over a property, fails to prove the title, he should be punished; —not his son or grandson; though these two also lose the property.‡ -(Hārīta in Mayūkha, p. 32.)

195. If a man sees, without protesting, his landed property being enjoyed by another, § he loses it after

---

been held to be proof of ownership ; and Pledges, Deposits, etc , have been laid down as exceptions to this rule (see below) ; hence the evidential character of Possession can be besmirched only in a case where it is definitely proved, by means of oral and other evidence, that the case in question is one of Pledge or Deposit and so forth. Thus in the case mentioned in the present text, ownership of the acquirer's son and grandson is held to be proved by Possession only. – This however is to be taken as referring to the case of possession extending during 'time beyond memory'—*i.e.*, over more than 'three generations,' or for more than a hundred years.—(Aparārka, p. 337.)

The son of the man who got the deed (of sale or gift) executed in his favour should not be called upon to refute any charges that may be made against the deed ; because the son is not expected to know the details of the original transaction. But the son loses the property, if he is unable to answer the objections As regards the grandson, however, he does not lose the property either ; as in his case 'Possession is more important.'—(Vishvarūpa.)

* 'In this case, mere Possession devoid of Title,'—even though proved by witnesses and other Evidence, is not valid, its validity having been impugned by the institution of the suit. This has been distinctly declared also by Nārada (1.93)—'If a man sued happen to die, his son should prove his case ; the *onus* cannot be disposed of by mere Possession.' —(Mitā.)

Inasmuch as mere Possession would not be sufficient to establish ownership, the son will have to adduce full evidence in support of his ownership.—(Aparārka, p. 638.)

† What is said here in regard to the son pertains to Possession during 'time within memory'; and what is said regarding the grandson pertains to Possession extending over 'time beyond memory.'—(Aparārka, p. 636.)

‡ See Sec. 191 above and notes thereon.

§ '*Another*'—a person not related to him.

This text apparently conflicts with the principle, generally acknowledged, that it is only Possession extending over a hundred years that creates ownership. Hence Mitākṣarā and Mayūkha and Vīramitrodaya have interpreted 'losing' to mean 'loss of the produce of the land,' not of *ownership*. That is, if A is in unlawful possession of B's land, before the eyes of B, who does not protest against it, then if B files a suit after twenty years (but before a hundred years), he may succeed in recovering the land, but the profits of the land he cannot recover. If the owner had gone abroad and came after twenty years, he would

twenty years; chattels are lost in ten years.—(Yājña. 2.24.)

196. If the real owner ignores enjoyment of his property by another, and remains silent (not protesting against it), then, after the lapse of the said time, his suit cannot succeed.*—(Nārada in Mitā. 2. 24.)

197. If a man's landed property has been enjoyed by another, for twenty years,—while a powerful king is reigning—his rights over that property cannot be established.—(Vyāsa in Aparārka, p. 612, and Vīra-Vya., p. 209.)

198. If a landed property is enjoyed, without obstruction, in the presence of the rightful owner, by another person, for three generations,—then it should not be taken away from the man in possession.—(Bṛhaspati in Parāsharamādhava-Vya., p. 108.)

199. Whatever thing the owner meekly sees being used by others in his presence, for ten years,—that thing he does not deserve to recover.†—(Manu 8. 147.)

200. If a man, through foolishness, ignores the enjoyment of his properties by others, under his very eyes,—he is completely overpowered (ousted) by such Enjoyment (Possession).—(Nārada in Vīra-Vya., p. 209.)

---

be able to recover the produce also—as he could not have 'seen' the property being enjoyed by another.—Similarly, if B's land was usurped and he protested against it, then even after twenty years, he would be entitled to compensation for the produce,—because it would not be a case of his 'not protesting.' Within twenty years, he could be entitled to recover the produce in any case.—(Kane—Mayūkha—Notes, p. 62.)

Aparārka would make the unprotesting man lose his entire ownership also—not only his right to the produce.

Medhātithi (under Manu, 8. 149) has discussed this text very fully, in all its various interpretations, and has finally come to the following conclusion:—Inasmuch as the various rules bearing upon this subject are found to be incompatible with one another, what has got to be ascertained in each case is, if there is any clear title to ownership,—and in the event of there being no title, if there is undisturbed possession;- if it is, then the decision must proceed on the basis of such Possession only.

* '*His suit cannot succeed*'—*i. e.*, he cannot establish his ownership, which would be the outcome of the suit.—(Aparārka, p. 632.)

† *Whatever thing*—all kinds of property—slaves, utensils, gold, silver, etc.—'*Meekly*'—*i. e.*, without filing a suit, or protesting to the man—'Why are you using my property?'—'*He does not deserve to recover*'—*i. e.*, his ownership entirely ceases. 'Seeing' here denotes '*knowledge*.'—'*By others*'—*i. e.*, by persons who are not his collaterals (nor his *relatives* according to some, but not accepted by Medhātithi). What happens in this case is described in Manu 8, 148 (see Sec 201, below).

201. If the owner is neither an idiot nor a minor,*—and the property is used in his own country,—it becomes frustrated in law, and the user becomes entitled to the property.—(Manu, 8. 148.)

202. The property of one who is neither an idiot nor a minor, having been used by strangers before his eyes for ten years,— belongs to him who uses it ;—but not if it is used by Shrotriyas, ascetics or royal officials.—Animals, land and women are not lost by adverse possession.—(Gautama, 12. 37—39.)

PART V

Exception to Possession as Proof

203. Where the property is in the use of men of the owner's own caste, or by his collaterals or relations,—ownership is not established by Possession ;—it is only in cases of possession by others† (strangers) that ownership is so established.—(Kātyāyana in Vira-Vya., p. 221.)

204. Pledges and Deposits should not suffer much‡ lapse of time ; as being left over for a long time, they would be liable to appropriation.—(Manu, 8. 145.)

---

*'*Idiot*' and the rest are mentioned only by way of illustration ; what are meant are persons who are unable to look after their own interests.—'*In his own country*'—*i. e.*, if both parties are inhabitants of the same country ; the meaning being that 'in cases where it is possible for the owner to be cognisant of the fact that his property is being used by another, if the enjoyment continues for ten years (Sec. 199), the ownership passes to the user.' [After discussing the several contradictory texts bearing upon the question, Medhātithi concludes as follows] —What has got to be ascertained in each case is—if there is any clear title to ownership of the dispossessed party ?—if none, has the property been in the possession of the other party for over ten years ?—if yes, then, the decision must proceed on the basis of Possession only. Thus it is that possession for three generations creates ownership in all cases.—[A peculiar case is next cited] —In a case where both parties are absolutely without title, and are asserting their rights by sheer force,—the prior possession, even though of older standing, is set aside by the twenty years' possession, which is more recent and hence less open to doubt.—(Medhā. on 8. 148.)

What is meant is that the dispossessed man loses his suit,—not that he loses the property entirely.—The non-suiting comes about in the following manner :—The man in possession says —'This man is not an idiot, etc.—in his presence I have been using this property for twenty years, in support of which I can produce many witnesses,—if I have been using his property unlawfully, why did he not protest against it so long ?'—and to this the other party can give no suitable answer.

†'Others'—persons not related, strangers. In the case of relatives, the owner may be ignoring the unlawful enjoyment by reason of his regard for the relative, and so forth ; hence he should not suffer for this.—(Vīra-Vya., p. 221.)

‡ The 'time' for redeeming the pledge is just when the principal, with accrued interest, has doubled itself ; and there is 'lapse' of this time if the thing is not redeemed then.—For Deposit also, the right time to recover it is

205. A pledge, a boundary, minor's property, a deposit, a property enjoyed by favour, women, King's property and the property of a Shrotriya are not lost by adverse possession. —(Manu, 8. 149.)

206. A pledge, a boundary, an open deposit, the property of an idiot, the property of a minor, sealed deposit, the King's property, the property of women and the property of Shrotriyas—these are exceptions [to the rule that property is lost by adverse possession extending over twenty years*] (see Sec. 195).—(Yājña. 2. 25.)

207. Even the pledge and other things, † if used by the other party in the presence of the pledger, for twenty years, become forfeited (to the owner); except in the case of the property of the King and the property of women.—(Nārada in Aparārka, p. 632.)

208. Things used through favour are never forfeited; such as a milch-cow, a camel, an ox, or the animal that is made over for breaking in.‡—(Manu, 8. 146.)

---

before the other party has occasion to think that the thing belongs to himself by reason of his having the use of it; beyond this time there is 'lapse of time.'— What is stated here is only a 'friendly advice'; as a matter of fact, there can never be an 'appropriation' of Pledges and Deposits by any 'lapse of time '(see Manu 8. 149—next section)—Others have explained that this text (Sec. 204) refers to Pledges only,—those cases where the Debtor, secure in the belief that the Principal cannot increase any further, through sheer wickedness, delays redeeming; in all such cases there should be 'appropriation' by the Pledgee. That is, if the debtor refuses to redeem, through such wicked motives, his right over the pledge should cease.

* In these cases, there being no possibility of any fault of the owner, the property cannot be lost by adverse possession.—(Mitā.)

In these cases adverse possession does not lead to loss of ownership.—(Vishvarūpa.)

In the case of a Pledge that can be used, the very fact of the thing having been pledged is a justification for the debtor not protesting against the use.—In the case of sealed Deposits, their using involves a delinquency on the part of the Pledgee, not on that of the debtor. —In the case of the property of the idiot and the like, the absence of protest is due to pure ignorance.—(Vīra-Vya., p. 220.)

† The meaning of this is that even Pledges and such other unforfeitable things become forfeited by adverse possession extending over twenty years,—what to say of other kinds of property?—Hence in the case of all property, besides Pledges and the like, long-standing Possession must be regarded as establishing ownership—It does not mean that Pledges, etc., actually become forfeited.—(Aparārka, p. 635.)

‡ Though the cow, etc., mentioned are already included under 'Deposit' mentioned in Manu 8. 149) (Sec. 205 above), yet they are specially emphasised here.—Some people have held the view that this text lays down an option to the general rule in Manu 8. 149;—the meaning being that in the case of things other

209. When such things as riding animals, and ornaments are lent for use, through affection, they should be returned within four or five years ; * or else, they become liable to forfeiture.—Marīchi in Parāsharamādhava-Vya., p. 109.)

210. Such articles do not become forfeited as have been lent for use to Shrotriyas, to royal officials, to friends, to relations.—(Vyāsa in Parāsharamādhava-Vya., p. 109.)

211. Houses, lands and such things, which are used, without title, by friends, relations or collaterals, do not become forfeited by use.—(Bṛhaspati in Parāsharamādhava-Vya., p. 109.)

---

than those mentioned here in Manu 8. 146, specifically, there *is* forfeiture sometimes, *e.g.*, when clothes used through favour, become torn and are thereby lost.—(Medhātithi.)

* This lays down a curtailment of the period of ten years laid down by Yājñavalkya (see Sec. 195 above) ; and Sec. 208 (Manu 8. 146) is an exception to what is laid down by Marichi (Sec. 209).—Parāsharamādhava-(Vya., p. 109.)

CHAPTER V

LAW OF DEBT

(A) MANNER OF ADVANCING LOANS

1. बृहस्पति 11.1] परिपूर्णं गृहीत्वाधिं बन्धं वा साधुलग्नकम् ।
लेख्यारूढं साक्षिमद्वा ऋणं दद्याद् धनी सदा ॥

1. The creditor should advance a loan after having first secured a pledge of adequate value, or a deposit, or a trustworthy surety,—entering it into a bond duly attested by witnesses.—(Bṛhaspati 11.1.)

[Quoted in *Vivādaratnākara*, p. 7 ; *Vīramitrodaya*, p. 293.]

NOTES

'*Pledge*'—a pledge to be used, *e.g.* cow, land, etc.—'*Deposit*'—a pledge not to be used; or a pledge not delivered to the creditor, the debtor only promising not to alienate it; or (according to Vīramitrodaya-Vyavahāra, p. 293) a pledge deposited, as security, with a mutual friend.—'*Of adequate value*'—sufficient to cover the principal with accrued interest.

2. नारद 1. 117] विश्रम्भहेतू द्वावत्र प्रतिभूराधिरेव च ।
लिखितं साक्षिणश्च द्वे प्रमाणे व्यक्तिकारके ॥

2. There are two sorts of guarantee—the surety and the pledge; bond and witnesses are the two proofs conducive to eivdence.—(Nārada 1. 117.)

[Quoted in *Vivādaratnākara*, p. 5.]

NOTES

Bond and witnesses are the two kinds of evidence for each of the four factors in the debt-transaction—*viz.*, Principal, Interest, Surety and Pledge.—(Asahāya.)

'*Guarantee*'—grounds of confidence that the loan will be repaid.—'*Evidence*'—that which renders the transaction manifest; these two have been mentioned as the most important.—(*Vivādaratnākara*, p. 5.)

As the rest of the book is believed to be of more than academic interest, the original Sanskrit texts have been put in, on the advice of lawyer-friends.

If a loan is advanced without a pledge or surety or deposit,—and also without a bond and witnesses,—it cannot be proved, if a dispute arises over it.—(Hārīta in *Smṛtichandrikā*, p. 320.)

3. कात्यायन] नैव स्त्रीदासबालेभ्यः प्रयच्छेत् किञ्चिदुद्धृतम् ।

3. No loan should be advanced to women, to slaves, to minors.—(Kātyāyana in *Vivādaratnākara*, p. 6.)

[Quoted in *Vivādaratnākara*, p. 6 ; *Smṛtichandrikā*, p. 321.]

NOTES

These persons being devoid of independent ownership, loans advanced to them would not be repaid.—(*Smṛtichandrikā Vyavahāra*, p. 321.)

In the event of the king being unable to protect the interests of the people, both lenders and borrowers should thoroughly examine each other's character before having any dealings.—(*Arthashāstra* 3. 11.)

(B) INTEREST

4. मनु 8. 140] वशिष्ठविहितां वृद्धिं सृजेद्वित्तविवर्धिनीम्"

Interest defined.

4. For increasing his capital, the money-lender shall stipulate an Interest sanctioned by Vashiṣṭha.—(Manu 8. 140.)

[Quoted in *Vivādaratnākara*, p. 7.]

NOTES

At the time of advancing the loan, he should clearly stipulate the rate of interest.—(Medhātithi.)

5. नारद 1. 98] स्थानलाभनिमित्तं यद् दानग्रहणमिष्यते ।
तत् कुसीदमिति प्रोक्तम् ॥

5. For the purpose of saving (the Principal) and profit (in the shape of Interest) loan is given and taken ; this is called ' loan on interest.'—(*Nārada* 1. 98.)

6. बृहस्पति 11.2] कुत्सितात् सीदतश्चैव निर्विशङ्कैस्तु गृह्यते ।
चतुर्गुणं वाऽष्टगुणं कुसीदाख्यमृणं च तत् ॥

6. ' Kusīda,' loan on interest, is that which,—fourfold or eightfold,—is unhesitatingly received from a person who is poor (*kutsita*) and in want (*sīdan*).—(Bṛhaspati, 11. 2.)

[Quoted in *Vivādaratnākara*, p. 5.]

NOTES

'Fourfold, etc.'—This includes the 'twofold' also.—(*Vivādaratnakara*, p. 5.)

7. मनु 8. 140] अशीतिभागं गृह्णीयान्मासाद् वार्धुषिकःशते ॥

बृहस्पति 11·37] अशीतिभागो वर्धेत लाभे द्विगुणतामियात् ॥

7. The money-lender shall take, monthly, the eightieth part of a hundred.—(Manu 8. 140.)

Rates of interest.

An eightieth part accrues as interest every month; the principal becomes doubled by such interest.—(Bṛhaspati, p. 11. 3.)

[Quoted in *Vivādaratnākara*, p. 7.]

NOTES

'*Monthly*'—after the lapse of a month; this applies to the case of loans secured by an enjoyable Pledge, as is made clear by Yājñavalkya 2. 37.—(*Vivādaratnākara*, p. 7, and *Vīramitrodaya-Vyavahāra*, p. 296.)

'This, eightieth part, is the universal rule; there are special rules basde on local customs'—says Nārada. (1. 105.)

8. याज्ञवल्क्य 2. 37] अशीतिभागो वृद्धिः स्यात् मासि मासि सबन्धके ।
वर्णक्रमाच्छतं द्वित्रिचतुष्पन्चकमन्यथा ॥

8. The eightieth part of the Principal shall be the interest per month, when the loan is advanced on pledge;—otherwise, it may be 2, 3, 4 or 5 per cent per month respectively, according to the caste (of the debtor).—(*Yājña.* 2. 37.)

[Quoted in *Vivādaratnākara*, p. 7; *Vyavahāramayūkha*, p. 167; *Vīramitrodaya*, p. 302.]

NOTES

It is the maximum that is here laid down.—The eightieth part, *i.e.*, $1\frac{1}{4}$ per cent is meant to be for the Brāhmaṇa; for others, the rates are to be determined by 'increasing by a quarter.'—(*Vishvarūpa.*)

The meaning is not quite clear; does it mean that the rate for the Kṣattriya is to be the rate for the Brāhmaṇa plus the fourth part of that rate?]

'*Pledge*'—what is given as security.—If the debtor is a Brāhmaṇa, then, in the case of there being no pledge, the rate of interest shall be 2 per cent; if he is a Kṣattriya, 3 p. c.; if a Vaishya, 4 p. c.; if a Shūdra, 5 p. c.—(*Mitākṣarā.*)

'*Otherwise*'—in cases where there is no Pledge.—(*Vyavahāramayūkha* p. 167.)

This is the rate allowed in all cases where no special rate has been prescribed, and also where no special rate has been stipulated.—(*Vīramitrodaya*, p. 302.)

9. मनु 8. 142] द्विकं शतं वा गृह्णीयात् ।

नारद 1. 100] द्विकं त्रिकं चतुष्कं च पञ्चकं च शतं समम् ।
मासस्य वृद्धिं गृह्णीयाद् वर्णानामनुपूर्वशः ॥

9. He may take 2 in the 100.—(Manu 8.142.)

He may take 2, 3, 4 or 5 p. c. per month, from the four castes respectively.—(Nārada 1. 100.)

NOTES

These are alternatives open to the man who could not maintain his family if he charged the lower rate 1¼ p. c.;—or to one who has a small capital; or to cases where the borrower is known to be dishonest. The higher rates are to be charged for one year only, not beyond that.—(*Medhātithi.*)

10. व्यास] सबन्धे भाग आशीतः षाष्ठो [V.L. साष्ट] भागः सलग्नके ।
निराधाने द्विकशतं मासलाभ उदाहृतः ॥

10. In cases where there is a Pledge, the rate is the eightieth part per mensem; where there is a surety, it is the sixtieth part [v. l. eightieth *plus* its eighth part]; where there is no pledge, it is 2 per cent.—(Vyāsa.)

[Quoted in *Vivādaratnākara*, p. 7; *Vyavahāramayūkha*, p. 167; *Smṛtichandrikā* 361.]

NOTES

For '*ṣāṣṭhaḥ*' (sixtieth), the *Vivādaratnākara* reads '*sāṣṭaḥ*,' meaning 'the eightieth part *plus* its eighth part'; and explains the meaning to be that in cases where there is neither Pledge nor Surety, the rate would be 2 *Purāṇas* (*i.e.*, 32 *Paṇas*). This is applicable to the Brāhmaṇa debtor; for the Kṣattriya and the rest the rates being fixed at 3, 4 and 5.—(*Vivādaratnākara*, p. 8.)

The 'eightieth part' and the 'sixtieth part' are for cases where there is a Pledge and a Surety; in cases where there is neither Pledge nor Surety, the rate is 2 per cent.—(*Smṛtichandrikā*, p. 361.)

11. हारीत] पुराणपञ्चविंशत्यां मासेऽष्टपणा वृद्धिः ।
एवं सद्भिमासैश्चतुर्भिर्वर्षैर्द्विपर्यागतं सन्तिष्ठते ॥

11. On 25 *Purāṇas*, the monthly interest should be 8 *Paṇas*; at this rate in 50 months, the Principal stands doubled.—(*Hārīta.*)

[Quoted in *Vivādaratnākara*, p. 8.]

NOTES

This refers to a Brāhmaṇa debtor.—(*Vivādaratnākara*, p. 8.)

12. हारीत] पुराणे पणिकं मासमित्येके ।

12. According to some people, the rate is 1 *Paṇa* per month per *Purāṇa*.—(*Hārīta*.)

[Quoted in *Vivādaratnākara*, p. 11.]

NOTES

This applies to debtors of mixed castes.—(*Vivādaratnākara*, p. 11.)

One one-fourth *Paṇa* per month per 100 *Paṇas* is the legal interest; 5 per cent for tradesmen; 10 per cent for those trading in forests; 20 per cent for those trading on the seas.—Any one who pays or receives a higher interest should be fined 250 *Paṇas*; and each witness to such a transaction shall be fined 125 *Paṇas*.—(*Arthashāstra* 3. 11.)

13. याज्ञवल्क्य 2.38] कान्तारगास्तु दशकं सामुद्रा विंशकं शतम्

13. Persons going into forests are to be charged interest at 10 per cent; Sea-voyagers, at 20 per cent.—(*Yājñavalkya* 2.38.)

NOTES

This refers to persons who, in course of their business, have to pass through dense forests, or to cross the seas; also where there is no Pledge and the traders are anxious to go out.—(*Aparārka*.)

This applies to persons who, borrowing money on interest, desire to make a profit and hence undertake journeys involving risk to life and property. These rates—10 and 20 p.c.—are also *per mensem*. These high rates are allowed in view of there being a risk of the entire Principal being lost.—(*Mitākṣarā*.)

'*Kantāragāḥ*' may also stand for *low castes*, and '*sāmudrāḥ*' for those 'who have renounced their appointed duties and professions and have taken to improper professions'—(*Vishvarūpa*.)

These are payable even when not previously stipulated; in the case of stipulation, any rate agreed upon is payable (see next section).—(*Vivādaratnākara*, p. 11.)

14. याज्ञवल्क्य 2.38] दद्युर्वा स्वकृतां वृद्धिं सर्वे सर्वासु जातिषु ॥

14. All men may pay, to persons of all castes, the interest that they have themselves stipulated.—(Yājña. 2.38.)

NOTES

This refers to cases where there is no pledge.—(*Aparārka*.)

This refers to all cases—with or without pledge.—(*Mitākṣarā*.)

The meaning is that there is no limit to stipulated interest.—(*Parāsharamādhava*-Vyava., p. 168.)

What is here laid down refers to cases of stipulated interest only ; in other cases, the rates are to be as prescribed by law.—(*Smṛtichandrikā*, p. 852.)

15. मनु 8.157] समुद्रयानकुशला देशकालार्थदर्शिनः ।
स्थापयन्ति तु यां वृद्धिं सा तस्याधिगमं प्रति ॥

15. As regards the exact amount to be paid, the interest shall be that which is fixed by persons expert in sea-voyages and those capable of calculating the profits in connection with particular places and times.—(Manu 8.157.)

NOTES

This refers to cases where no interest has been previously fixed, or where there is some dispute regarding the exact amount payable.—(*Vivādaratnākara*, p. 11.)

16. याज्ञवल्क्य 2.39
विष्णु 6.15
नारद 1.107 } सन्ततिस्तु पशुस्त्रीणाम् ।

16. In the case of female cattle (or females and cattle), the interest is in the shape of progeny.—(Yājña. 2. 39 ; also Viṣṇu 6.15 and Nārada 1.107.)

NOTES

When female cattle is lent out on interest, its progeny is to be the sole interest payable.—(*Aparārka.*)

The lending out of cattle is done by persons unable to maintain it, and yet desirous of having it maintained and obtaining its offspring ; and the receiving of such cattle is done by persons who are desirous of tending the cattle and obtaining the milk.—(*Mitākṣarā.*)

There is no other interest allowed in this case.—The text may be taken as referring to 'cattle' *and* 'females'—*i.e.*, slave-girls.—(*Vishvarūpa.*)

'*Females*'—slave-girls. If there is no progeny, the only profit accruing to the lender is the maintenance and safety of the property lent.—(*Smṛtichandrikā*, p. 362.)

'Females'—slave-girls and the like—and 'cattle'—cow, she-buffalo and so forth—are handed over, by their owner who is unable to maintain them, to another person for the purpose of having them maintained and obtaining their progeny ; the understanding being that the keeper will take the milk or obtain the services of the slaves. If this arrangement continues for a long time, the only interest payable is in the form of the progeny ; there is no other kind of interest.—(*Vivādaratnākara*, p. 18.)

17. गौतम] कुसीदवृत्तिर्धर्म्या विंशति पंचमाषिकी ।

17. Five *Māṣas* per month to the twenty is the lawful interest.—(*Gautama.*)

[Quoted in *Vivādaratnākara*, p. 6.]

NOTES

The Principal being 20 *palas* (20 *Māṣas* making one *Pala*), it earns as interest 5 *māṣas* per month. [This also works out to be the 'eightieth part.'] – (*Vivādaratnākara*, p. 6.)

18. बृहस्पति] वृद्धिश्चतुर्विधा प्रोक्ता पञ्चधाऽन्यैःप्रकीर्तिता ।
11.4-8] षड्विधाऽस्मिन् समाख्याता तत्त्वतस्तां निबोधत ॥
कायिका कालिका चैव चक्रवृद्धिरथापरा ।
कारिता च शिखावृद्धिर्भोगलाभस्तथैव च ॥
कायिका कर्मसंयुक्ता मासग्राह्या तु कालिका ।
वृद्धेर्वृद्धिश्चक्रवृद्धिः कारिता ऋणिना कृता ॥
प्रत्यहं गृह्यते या तु शिखावृद्धिस्तु सा स्मृता ।
गृहात्तोषः फलं क्षेत्रात् भोगलाभःप्रकीर्तितः ॥

Kinds of Interest.

18. Interest is declared by some to be of four sorts; of five sorts, by others; by others again, of six sorts: (*a*) *Kāyikā*, 'Corporeal,' (*b*) *Kālikā*, 'Periodic,' (*c*) *Chakra*, 'Wheel,' (*d*) *Kāritā*, 'Stipulated,' (*e*) *Shikhā*, 'Hair,' (*f*) *Bhogalābha*, 'Enjoyment.'—(*a*) The 'Corporeal Interest' is related to bodily labour; (*b*) the 'periodic' is that which is realised monthly; (*c*) the 'wheel' is interest on interest (compound interest); (*d*) the 'Stipulated' is that fixed by the debtor; (*e*) the 'Hair Interest' is what is realised day by day; (*f*) the 'Interest of enjoyment' consists in the use of the house or the produce of a field.—(Bṛhaspati 11. 4–8.)

[Quoted in *Vivādaratnākara*, pp. 9, 12, 13; *Vīramitrodaya*, p. 294; *Smṛtichandrikā*, p. 359.]

NOTES

Manu (8.153) speaks of—(*a*) *Chakravṛddhi*, (*b*) *Kālikā*, (*c*) *Kāritā* and (*d*) *Kāyikā* and forbids the paying as well as the receiving of these. Medhātithi explains these as – (*a*) Compound Interest, or (according to some) the interest paid by the user of a wheeled conveyance for the day that he uses it,—(*b*) Interest computed month by month, or (according to some) the stipulation in the form 'if you do not pay off by such and such time, the principal shall become doubled forthwith,'—(*c*) special rates privately stipulated by the parties, in view of mutual needs, (*d*) payable by bodily labour.

Vyāsa (quoted in *Vivādaratnākara*, p. 10) defines *Kāyikā*, 'Corporeal,' as consisting of 'milking' or 'riding.'

Nārada (1.103–104) says – That which runs by the month is termed *Periodic Interest*; that is called *Stipulated Interest* which has been promised by the debtor himself; Interest at the rate of one *Paṇa* or quarter of a *Paṇa* paid regularly, without diminishing the Principal, is called *Kāyikā*

(Corporeal) Interest; Interest upon Interest is 'Compound Interest.' - According to Halāyudha, what Nārada's definition of *Kāyikā* means is that the creditor shall, by way of interest, continue to use the conveyance (or cattle or slave) as long as his Principal remains unpaid. But this explanation has been rejected. —(*Vivādaratnākara*, p. 9.)

'*Interest of enjoyment*'—is that form of interest which consists in the enjoyment or use of the Pledge handed over at the time of lending.—(*Vivādaratnākara*, p. 13.)

'*Kāyikā*,' '*Corporeal*, - where Interest has been agreed upon to consist in the milking or riding of the cow or conveyances pledged with the creditor. The *Madanaratna* however defines this Interest as consisting of the milking, etc., *along with* the usual rate of Interest. —'*Compound Interest*,'—under this at the end of each month, the interest for that month is added up to and goes to swell the Principal.—'*Stipulated*' is that which has been voluntarily agreed upon by the Debtor.— The '*Hair Interest*' realised day by day, —'day by day' stands here for that number of days within which the Debtor has promised to repay.—'*Use of the house, etc.*'—Interest in the shape of the satisfaction derived from residing in the house that has been pledged; and also in the shape of using the grains and fruits and other things produced in the land that has been pledged. 'House and land' here stand for *immovable property* in general.— (*Vīramitrodaya*, p. 294.)

'*Stipulated.*'—What has been agreed upon by the Debtor under compulsion from some one else is not lawful.— (*Smṛtichandrikā*, p. 359.)

19. 8.1.51 मनु] कुसीदवृद्धिर्द्वैगुण्यं नात्येति सकृदाहृता ।

19. Interest on money-loans stipulated at one time shall not exceed the double of the Principal.—(*Manu* 8. 151.)

Limit to Interest.

NOTES

'*Stipulated at one time.*'—This is added with a view to the renewal of loans. Even after the Principal has been doubled, if the creditor is willing to earn further interest, and the Debtor also wishes to retain the money for the purpose of carrying on some larger business, he renews the deed, entering, as the new Principal, the former Principal along with the interest accrued up to date, and thenceforward it is on this new Principal that further interest shall accrue. So that the original Principal, even though doubled, continues to grow further.—It also continues to grow further when transferred to another person; for instance, when the Principal has become doubled and the creditor has need of the money, and asks the Debtor to pay, the latter takes him to a third party and says—'this man will make the payment for me in so many days'; and in this case, during these additional days, further interest shall accrue.—Or, even before the Principal has become actually doubled, if the Pledge is handed over to another person, then further interest begins to accrue from the date of such transference of the Pledge, and the limit of 'double' shall be computed upon the total amount of the Principal along with the interest

accrued upto the date of the transference. That is, when the creditor, with the sanction of the debtor, hands over the latter's pledge to a third party and receives his due from him, then the interest continues to accrue.

Some people have held that this rule refers to a case where the whole amount of interest accruing during the year is paid *at one time*, whereas if all the interest that has fallen due is not paid off wholly, at the end of the year, then it will go on accruing even beyond the 'double of the Principal.' But this is not acceptable.—(*Medhātithi.*)

What the phrase '*at one time*' means is that even after the Interest has become double of the Principal, it may, with the consent of the debtor, be added on to the Principal and thus it will go on accruing further.—This rule applies to loans of *gold.**—(Aparārka, 2. 39.)

This rule applies to cases where the loan is advanced *at one time*, and also realised *at one time*. If the transaction is renewed, either between the same parties or through a third intermediary, then after proper adjustment of the loan account, by addition and subtraction, the new Principal becomes the subject of a fresh transaction and as such begins to earn further interest. Even if the original transaction continues and is renewed,—in case the creditor has gone on realising his interest either daily or monthly or annually, there is no chance of his due reaching the 'double of the Principal'; so that in such cases the interest does continue to accrue even after more than double of the Principal may have been realised. [What is meant is that if the accounts are made up after the lapse of time and payment is received *once only* of the entire loan with interest, then the total amount payable shall not exceed 'double of the Principal.']—(Mitākṣarā 2. 39.)

The *Vyavahāramayūkha* (p. 171) agrees with this view.

Gautama (12. 31) says—'If the loan remains unpaid far a long time, the Principal may become doubled; also Kātyāyana (quoted in Aparārka, p. 643)—'The loan advanced should be received back doubled; if the double is not received, then further interest should be levied.'

20. मनु 8.151] धान्ये शदे लवे वाह्ये नातिक्रामति पञ्चताम् ॥

गौतम] पशूपज-लोम-क्षेत्र-सद-वाह्येषु नातिक्रामति पञ्चगुणत्वम् ॥

20. In the case of grains, fruits, wool and beasts of burden, the total shall not go beyond the quintuple.—(Manu, 8. 151.)

On animal-products (milk, etc.), wool, field-products (grains and fruits) and beasts of burden, the interest does not exceed the quintuple.—(Gautama in *Vivādaratnākara*, p. 18.)

NOTES

The law on this point is as follows: If the money-lender has been reduced to poverty, and the debtor has become opulent, having earned much wealth with the help of the grains that he had borrowed, then the limit is to be *five times*,

* Medhātithi (8.151) sees no justification for restricting the rule to any particular substance.

and normally it is to be only *four* times (as laid down in other Smṛtis).—(Medhātithi.)

This refers to a case where at the time of repaying, the debtor has become very wealthy. According to the *Madanaratna*, this rule is only intended to entirely exclude '*six times*.'—(Vīramitrodaya, p. 298.)

Manu's rule is meant to exclude six-foldness.—(Mayūkha, p 170.)

21. नारद 1. 106] द्विगुणं त्रिगुणं चैव तथाऽस्मिंश्च चतुर्गुणम् ।
तथाऽष्टगुणमन्यस्मिन् देयं देशेऽवतिष्ठते ॥

21. In some countries, the loan may grow till double the amount of the Principal has been reached; in other countries it may grow till it becomes three, or four, or eight times as large as the Principal.—(Nārada 1. 106.) [Quoted in *Parāsharamādhava*, p. 171.)

22. याज्ञवल्क्य 2. 39] रसस्याष्टगुणा परा ।
वस्त्रधान्यहिरण्यानां चतुस्त्रिद्विगुणा परा ॥

22. On liquids, the octuple is the maximum; on clothes, quadruple; on grains, treble; on gold, double.—(Yājña. 2. 39.)

NOTES

'Liquids'—such as oils, clarified butter and such things; if the loan stands for a long time and no interest is realised in the interval, then the maximum realisable is the octuple of the Principal.—(Mitākṣarā.)

23. बृहस्पति 11. 13—15] हिरण्ये दिगुणा वृद्धिस्त्रिगुणा वस्त्रकुप्ययोः ।
धान्ये चतुर्गुणा प्रोक्ता सदवाह्यलवेषु च ॥
उक्ता पंचगुणा शाके बीजेक्षौ षड्गुणा स्मृता ।
लवणस्नेहमद्येषु वृद्धिरष्टगुणा मता ॥
गुडे मधुनि चैवोक्ता प्रयुक्ते चिरकालिके ॥

23. On gold, the interest may make the debt double; on clothes and base metals, treble; on grains, quadruple; so also on edible plants, beasts of burden and wool; on pot-herbs, quintuple; sextuple on seeds and sugarcane; and octuple on salt, oil and spirituous liquor; likewise on molasses and honey;—if the loan be of old standing.—(Bṛhaspati 11. 13—15.) [Quoted in *Smṛtichandrikā*, pp. 371-372; *Vivādaratnākara*, p. 18; *Vīramitrodaya*, p. 298.]

NOTES

'*Of long-standing*'—*i.e.*, passed beyond the time when the Principal has become doubled.—(*Vīramitrodaya*, p. 298.)

'*Gold*' includes silver also.—(*Vivādaratnākara*, p. 18.)

24. हारीत] तूले तु द्विगुणं धान्यं त्रिगुणमेव वर्धते । तथोर्णा कार्पासः संवत्सरेण तृणशलाकं घृतलवणगुडमष्टगुणम् ॥

24. At the time of the new harvest, grain becomes double; it may rise up to treble; wool, cotton, grass and seeds, clarified butter, salt, sugar and honey, become octuple in a year.—(Hārīta in *Vivādaratnākara*, p. 12.)

NOTES

About the time of the harvest, grain becomes doubled even in two or three months. If not repaid at harvest-time, it may increase up to treble.—(*Vivādaratnākara*, p. 12.)

When grains are advanced on interest, the quantity payable in kind after the next harvesting shall be one and a half times the Principal. If the loan remains unpaid after the harvesting, the Principal along with the said interest in kind (*i.e.*, $1\frac{1}{2}$ times of the Principal) shall be valued in cash, and thereafter the interest shall accrue in cash at a rate to be settled at the time, and no further interest shall accrue in kind. If the debtor has gone abroad for a long time, he shall, on return, pay double the amount of the value of the Principal.—(Arthashāstra, 3. 11.)

25. कात्यायन] मणिमुक्ताप्रबालानां सुवर्णरजतस्य च ।
तिष्ठति द्विगुणा वृद्धिः फलकैटाविकेषु च ॥

25. On jewels, pearls, corals, gold and silver, the interest stops at the double; also on fruits, silks and wools; on all oils, wines and clarified butter, sugar and salt, it goes on to the octuple.—(Kātyāyana in *Mayūkha*, p. 170.)

26. वसिष्ठ] वज्रमुक्ताप्रबालानां रत्नस्य रजतस्य वा ।
द्विगुणा दीयते वृद्धिः कृतकालानुसारिणी ॥
ताम्रायःकांस्यरीतीनां त्रपुणः सीसकस्य च ।
त्रिगुणा तिष्ठते वृद्धिः कालाच्चिर (V.L. कालास्वैर) कृतस्य तु ॥

26. On diamond, pearl, coral, gems and silver, the interest paid is the double, in accordance with the time of the transaction; on copper, iron, bell-metal, brass, zinc and lead, the interest stays at the treble, in loans of long-standing.—(Vasiṣṭha in *Parāsharamādhava*, p. 171 and *Mayūkha*, p. 170.)

27. वसिष्ठ 2. 46—47] द्विगुणं हिरण्यं त्रिगुणं च धान्यम्।
धान्येनैव रसा व्याख्याताः। पुष्पमूलफलानि च।
तुलाधृतमष्टगुणम्॥

27. Gold takes double its value on repayment; and grain, treble; so also the flavouring substances; as also flowers, roots and fruits; octuple, on articles held by the balance.—(Vasiṣṭha 2. 46-47.) [Quoted in *Vivādaratnākara*, p. 18, and *Vīramitrodaya*, p. 98.]

NOTES

Articles held by the balance—such as camphor and the like.—(*Vivādaratnākara*, p. 18.)

This rule relates to those countries where the custom is that in the case of grain, only the treble shall be received and so forth; or to cases where the debtor is very poor.—(*Vīramitrodaya*, p 298.)

In this matter, the exact rule to be applied shall be determined by the capacity of the debtor and also by the condition of the times—whether there is famine or not and so forth.—(*Mitākṣarā*, and *Parāsharamādhava*, p. 171.)

28. व्यास] शाककार्पासबीजेषु षड्गुणा परिकीर्तिता।

28. On vegetables, cotton and seeds, the interest may become sextuple; octuple on wines, oils and spirits.—(Vyāsa in *Mayūkha*, p. 170 and in *Parāsharamādhava*, p. 172.)

29. विष्णु 6. 11—14] हिरण्यस्य द्विगुणा वृद्धिः, त्रिगुणा वस्त्रस्य,
धान्यस्य चतुर्गुणा, रसस्याष्टगुणा।

29. On gold, the interest shall rise no higher than to make the double of the Principal;—on grains, treble; on cloth quadruple; on liquids, octuple.—(Viṣṇu 6. 11—14.)

30. विष्णु 6. 17] अनुक्तानां द्विगुणा।

30. On things not specifically mentioned, the interest shall not rise above the double.—(Viṣṇu 6. 17.)

NOTES

On grains, Manu (8. 151) has prescribed the limit at the quintuple; Bṛhaspati has put it at the quadruple; Viṣṇu, Marīchi, Vasiṣṭha and Hārīta at the treble. In any particular case the exact limit permissible is to be determined by the qualifications of the Debtor; as also by the value of the particular kind of grain, and by the exigencies of time and place.—(*Vivādaratnākara*, p. 18.)

USURY

31. बृहस्पति 11. 12] भोगो यद् द्विगुणादूर्ध्वं चक्रवृद्धिश्च गृह्यते ।
मूलं च सोदयं पश्चात् वार्धुष्यं तद्विगर्हितम् ॥

31. To continue to retain and enjoy the Pledge after the double of the Principal has been realised from it, to charge compound interest, and to realize the Principal along with interest accrued (at the time of returning the Pledge), —all this constitutes *usury* and is censured.—(Bṛhaspati, 11. 12.)

NOTES

'*Censured*'—even though sanctioned by Law, such usury is immoral.—(*Vivādaratnākara*, p. 14.)

32. मनु 8. 152] कृतानुसारादधिका व्यतिरिक्ता न सिध्यति ।
कुसीदपथमाहुस्तं पञ्चकं शतमर्हति ॥

32. Interest stipulated in contravention of the law is not payable; they declare this to be the usurer's way; it is only 5 per cent to which the creditor is entitled.—(Manu 8. 152.)

NOTES

If the rate of interest stipulated is in excess of the sanctioned rates, it should not be paid, because it is excessive. In case the lender is anxious to make as much money as possible out of the transaction,—under the impression that the borrower is going to carry on extensive business with the capital he is lending,—then the utmost that he can obtain is 5 per cent, irrespectively of the caste of the borrower.—By another reading, the rule would mean that 'if at the outset, on account of the borrower's poverty, a low rate has been agreed to, but subsequently, the debtor having acquired much wealth, if on account of his opulence, a higher rate of interest is demanded, —this cannot be payable; since all that the man is entitled to is 5 per cent'—(Medhātithi.)

'*It is only 5 per cent to which the creditor is entitled,*'—this refers to cases where repayment has been demanded—says the *Smṛtichandrikā*. According to *Vivādaratnākara*, p. 14, what Manu's rule means is that—'Any rate of interest which is in excess of the 2 per cent sanctioned in the Scriptures is not payable, unless it has been agreed to by the Debtor; if however for some reason the creditor desire to realise excessive interest, even though not previously stipulated, all that he can get from a Brahmaṇa-debtor is 5 per cent.'—(*Vīramitrodaya*, p. 393.)

33. बृहस्पति 11. 9] ऋणिकेन तु या वृद्धिरधिका सम्प्रकल्पिता ।
कात्यायन] आपत्कालकृता नित्यं दातव्या कारिता तु सा ॥

33. An excessive rate of interest may be paid when it is one, that has been stipulated by the debtor in view of the urgency of his need.—(Bṛhaspati 11. 9; also Kātyāyana in *Mayūkha*, p. 167.)

NOTES

The excessive rate may be paid only when it has been voluntarily agreed to by the debtor; not when he has been forced by the Creditor to agree to it. – (*Vivādaratnākara*, p. 10; also *Vīramitrodaya*, p. 295.)

No interest having been stipulated,—if the creditor charges interest, —or a certain rate of interest having been settled, if he charges an enhanced rate,—the creditor shall be fined four times the Principal.—(Arthashāstra 3. 11.)

EXCEPTION TO THE ABOVE MAXIMA

34. विष्णु 6. 16] किण्वकार्पाससूत्रवर्मचर्मायुधेष्टकाङ्गाराणामक्षया ।

34. On substances from which spirituous liquor is extracted, on cotton, yarns, leather, weapons, bricks and charcoal, the interest never ceases.—(Viṣṇu 6. 16.) [Quoted in *Vīramitrodaya*, p. 300.]

35. बृहस्पति 11. 16] तृणकाष्ठेष्टकासूत्रकिण्वपत्रास्थिचर्मणाम् ।
हेतिपुष्पफलानां च वृद्धिस्तु न निवर्तते ॥

35. On grass, wood, bricks, yarns, substances from which spirituous liquor is extracted, leaves, bones, leather, weapons, flowers and fruits,—there is no limit to the interest.—(Bṛhaspati 11. 16.) [Quoted in *Vīramitrodaya*, p. 300.]

NOTES

By another reading, this rule means that *there is no interest* payable on these substances.

There is no maximum limit in the case of these things; the interest may go on accumulating indefinitely.—(*Vīramitrodaya*, p. 300.)

36. वसिष्ठ] दण्डवर्मास्थिशृङ्गाणां मृण्मयानां तथैव च ।
अक्षया वृद्धिरेतेषां पुष्पमूलफलस्य च ॥

36. In the case of sticks, armour, bones, horns, earthenware, flowers, roots and fruits, the interest is unlimited.—(Vasiṣṭha in *Parāsharamādhava*, p. 173.)

37. बृहस्पति 11.11] शिखावृद्धिं कायिकां च भोगलाभं तथैव च ।
धनी तावत् समादद्यात् यावन्मूलं न शोधितम् ॥

37. 'Hair Interest,' 'Periodic Interest' and 'Interest by Enjoyment' shall be taken by the creditor so long as the Principal remains unpaid.—(Bṛhaspati 11. 11.) [Quoted in *Vīramitrodaya*, pp. 300-301.]

CASES WHERE NO INTEREST IS CHARGED

38. नारद 1. 108] न वृद्धिः प्रीतिदत्तानां स्यादनाकारिता क्वचित् ।
अनाकारितमप्यूर्ध्वं वत्सरार्धाद् विवर्धते ॥

38. No interest must ever be raised on loans made from friendship, unless it has been stipulated. Without an agreement even, interest accrues on such loans after the lapse of half a year.—(Nārada 1. 108.) [Quoted in *Vīramitrodaya*, p. 301; *Parāsharamādhava*, p. 168 and *Vyavahāramayūkha*, p. 168.]

NOTES

'*Loans made from friendship*'—*i.e.*, things lent without any talk of demanding or repaying.—(*Vīramitrodaya*, p. 301.)

'*Stipulated.*'—The original is '*anākāritam*,' which has been explained by Aparārka as 'not demanded.'

When the loan has been taken without any agreement as to the time of repayment, the interest shall begin to accrue after the lapse of six months.—(*Parāsharamādhava*, p. 168.)

'*Without an agreement*,' etc.—That is, where the loan is taken without any understanding as to the time of repayment, interest begins to accrue after six months.—(*Vīramitrodaya*, p. 301.)

39. नारद 1. 109] प्रीतिदत्तं न वर्धेत यावन्न प्रतियाचितम् ।
कात्यायन] याच्यमानमदत्तं चेत् वर्धते पञ्चकं शतम् ॥

39. A loan made from friendship can never yield any interest, unless such loan has been demanded. If it is not repaid on demand, it shall yield interest at the rate of 5 per cent.—(Nārada 1. 109; also Kātyāyana quoted in *Mayūkha*, p. 168.) [Quoted in *Vīramitrodaya*, p. 301.]

NOTES

A loan not restored, on demand even, shall yield interest at the rate of 5 per cent per mensem from the day of the demand, even though six months may not have lapsed.—(*Asahāya*; also *Vīramitrodaya*, p. 301.)

No interest shall accrue during the time that the debtor is engaged in a long-continued sacrificial session—or ill,—or detained in his Teacher's house,—or a minor, - or a bankrupt.—(Arthashāstra, pp. 3. 11.)

40. नारद 2. 36] पण्यमूल्यं भृतिर्न्यासो दण्डो यच्च प्रकल्पितः

[v. l. यश्चाभिहारिकम्]

वृथादानाक्षिकपणा वर्धन्ते न विवक्षिताः ॥

40. Price of things bought, wages, deposits, fines, [v. l. what has been obtained by deceit], wasteful gifts, winnings at dice,—these do not yield any interest unless so stipulated.—(Nārada 2. 36.) [Quoted in *Vivādaratnākara*, p. 28, *Vīramitrodaya*, p. 303 and *Vyavahāramayūkha*, p. 169.]

NOTES

'*Wasteful gifts*'—such as gifts promised to dancers and the like (*Mayūkha*, p. 169);—what is given away without any regard to Dharma—(*Vivādaratnākara*, p. 20.)

The absence of interest in the case of the '*price of things bought*' should be understood to apply to cases where the purchaser does not go out of the country, and where the price has not been demanded by the vendor; in the case of '*Deposit*' also this rule applies only when there has been no demand for restoration.—(*Vīramitrodaya*, p 303.)

'*What has been obtained by deceit.*—This is the meaning of '*ābhihārikam*, which is the reading of the *Vivādaratnākara* (p. 20) in place of '*yasheha prakalpitaḥ*' which is the reading adopted by the *Vīramitrodaya*, and the *Mayūkha*.

41. कात्यायन] पण्यं गृहीत्वा यो मूल्यमदत्त्वैव दिशं व्रजेत् ।

ऋतुत्रयस्योपरिष्टात् तद्धनं वृद्धिमाप्नुयात् ॥

41. Having purchased a commodity, if the purchaser goes away, without paying the purchase-money, then interest begins to accrue on that money after three seasons.—(Kātyāyana.) [Quoted in *Smṛtichandrikā*, p. 363; *Vīramitrodaya*, p. 302; *Vyavahāramayūkha*, p. 169.]

NOTES

This refers to cases where no demand has been made by the vendor. In a case where the demand has been made, but no payment made, interest begins to accrue from the date of the demand (see next section).—(*Vīramitrodaya*, p. 302.)

The rate of interest chargeable in this case would be the 'eightieth part.'—(*Smṛtichandrikā*, p. 363.)

42. कात्यायन] निक्षिप्तं वृद्धिशेषं च क्रयं विक्रयमेव च ।
याच्यमानमदत्तं चेत् वर्धते पञ्चकं शतम् ॥

42. Pledge, Balance of Interest, Commodity for Sale, Purchase-money,—if these are not delivered on demand, they begin to yield interest at the rate of 5 per cent.—(Kātyāyana.) [Quoted in *Parāsharamādhava*, p. 169; *Vivādaratnākara*, p. 15; *Vyavahāramayūkha*, p. 169.]

NOTES

What is said in Nārada's rule above, section 38, is an exception to this rule of Kātyāyana's,—says *Parāsharamādhava*, p. 169.

What is meant is that, if the vendor fails to deliver the commodity sold—or the vendee fails to pay the purchase-money,—both become liable to pay interest at the rate of 5 per cent. —(*Vivādaratnākara*, p. 15.)

43. संवर्त] न वृद्धिः स्त्रीधने लाभे निक्षिप्ते च यथास्थिते ।
सन्दिग्धे प्रातिभाव्ये च यदि न स्यात् स्वयं कृता ॥

43. There is no interest on '*strīdhana*,' on Interest, on Pledge that has retained its condition, on what had been in doubt, or on what is due from the surety,—unless it has been voluntarily stipulated.—(Samvarta.) [Quoted in *Vivādaratnākara*, p. 20 and *Parāsharamādhava*, p. 169.]

NOTES

'*Strīdhana*'—*i.e.*, wife's property borrowed by the husband.—(*Vivādaratnākara*, p. 20.)

'*Pledge that has retained its condition*'.—*i.e.*, which has not changed hands (*Parāsharamādhava*);—the 'pledge' meant here is other than what has been not restored on demand (*Vivādaratnākara*, p. 20.)

'*What had been in doubt*'—*i.e.*, in regard to the advancing of which the lender was in doubt, and he decided to advance it only after hesitation. (*Vivādaratnākara*, p. 20.)

'*What is due from the surety*'—*i.e.*, from the man who had stood security for the repayment of the debt.—(*Parāsharamādhava*, p. 170.)

44. कात्यायन] कर्मसस्यासवद्यूते पण्यमूल्ये च सर्वदा ।
स्त्रीशुल्केषु न वृद्धिः स्यात् प्रातिभाव्यगतेषु च ॥

44. Armour, newly-harvested grain, wine, gambling dues, price of commodity, price of girl, and what is due from the surety,—these never yield interest.—(Kātyāyana.) [Quoted in *Vivādaratnākara*, p. 20 and *Parāsharamādhava*, p. 170.]

NOTES

'*Newly-harvested grain*'—*i.e.*, Bundles of unthreshed corn ; - '*Price of girl.* paid in the '*Āsura*' form of marriage ; or gift made to courtesans.—(*Vivādaratnākara*, p. 20.)

45. व्यास] प्रातिभाव्यं भुक्तबन्धमगृहीतं च दित्सतः ।
न वर्धते प्रपन्नस्य दमः शुल्कं प्रतिश्रुतम् ॥

45. What is due from the surety, that loan the pledge whereof has been enjoyed, that which has been offered by the debtor but not accepted by the creditor, fines and the fee that has been promised—these do not yield interest ; Interest ceases also from the date on which the debtor is held by the creditor under restraint.—(Vyāsa.) [Quoted in *Vivādaratnākara*, p. 21 ; *Parāsharamādhava*, p. 170 ; *Vīramitrodaya*, p. 304.]

NOTES

'*The pledge whereof*' *etc.*—*i.e.*,—there is no interest on loans secured by a Pledge that is enjoyed by the creditor. -(*Vivādaratnākara*.)

'Clothes and ornaments' also are to be included in the list.—(*Vīramitrodaya*, p. 304.)

46. विष्णु 6.5.] आध्युपभोगे वृद्ध्यभावः ।

46. By the use of the pledge, interest is forfeited.—(Viṣṇu 6. 5.) [Quoted in *Vivādaratnākara*, p. 21.]

NOTES

'*Pledge*,'—which is given for keeping.—(*Vivādaratnākara*, p. 21.)

47. याज्ञवल्क्य 2. 44] दीयमानं न गृह्णाति प्रयुक्तं यः स्वकं धनम् ।
मध्यस्थस्थापितं तत् स्यात् वर्धते न ततः परम् ॥

47. If the creditor does not accept the loan that he had advanced, when it is repaid to him, it should be deposited with a middle-man ; and thenceforth it ceases to yield interest.—(Yājñavalkya, 2. 44.)

NOTES

If the debtor does not hand it over to the middle-man, but retains it himself,—then it does continue to yield interest—(*Vīramitrodaya*, p. 365.)

48. विष्णु 6. 10] दीयमानं प्रयुक्तमर्थमुत्तमर्णस्याग्रह्णतस्ततः परं न वर्धते ।

48. Property lent bears no further interest after it has been repaid but refused by the creditor—(Viṣṇu, 6. 10.) [Quoted in *Vivādaratnākara*, p. 21.]

NOTES

If the creditor refuses to accept payment of debt, he shall be fined 12 *Paṇas*; if he shows cause why he has not accepted it, then interest shall cease to accrue from that date and the amount offered shall be deposited with a third party.—(Arthashāstra. 11.) According to Vasiṣṭha (2. 3.49-50), Interest ceases on the death of the King; but begins to accrue after the coronation of his successor.

49. विष्णु 6. 40] यो गृहीत्वा ऋणं पूर्णं श्वो दास्यामीति सामकम् ।
न दद्याल्लोभतःपश्चात् स तस्माद्वृद्धिमाप्नुयात् ॥

49. If a man, on receiving a loan without interest, promises to repay it fully on the following day, but through covetousness, does not pay it,—the loan shall begin to yield interest from that day.—(Viṣṇu 6. 40.) [Quoted in *Parāsharamādhava*, p. 168; *Vīramitrodaya*, p. 301.]

NOTES

The meaning of this is that in certain cases, interest is payable even though it has not been agreed upon; the rule being that when the debtor fails to repay the debt on the promised day, from that day, he becomes liable to pay interest.—(*Parāsharamādhava*, p. 168.)

'*Following day*'—stands for the day on which repayment is promised;—'*without interest*'—this is the meaning of '*sāmakam*';—'*from that day*,' from the promised day.—(*Vīramitrodaya*, p. 301.)

50. कात्यायन] यो याचितकमादाय तमदत्त्वा दिशं व्रजेत् ।
ऊर्ध्वं संवत्सरात्तस्य तद्धनं वृद्धिमाप्नुयात् ॥

50. If a man, having taken a loan, goes away without repaying it—that loan begins to bear interest after one year.—(Kātyāyana.) [Quoted in *Vyavahāramayūkha*, p. 168; *Vīramitrodaya*, p. 302 and *Vivādaratnākara*, p. 15.]

NOTES

This refers to cases where no payment has been demanded during the year.—(*Vīramitrodaya*, p. 302.)

'*Goes away*'—to a place other than that where the creditor lives.—(*Vivādaratnākara*, p. 15.)

51. कात्यायन] कृत्वोद्धारमदत्त्वा यो याचितस्तु दिशं व्रजेत् ।
ऊर्ध्वं मासत्रयात्तस्य तद्धनं वृद्धिमाप्नुयात् ॥

51. If a man, having taken a loan, goes away, when asked to repay it,—that loan begins to yield interest after three months.—(Kātyāyana in *Mayūkha*, p. 168.)

52. कात्यायन] स्वदेशेऽपि स्थितो यस्तु न दद्याद्याचितः क्वचित् ।
तं ततोऽकारितां वृद्धिमनिच्छन्तं च दापयेत् ॥

52. If the man, while remaining in his own place (and not going away), does not repay the loan on demand,—then from the date of that demand, he should be forced to pay interest, even though it has not been stipulated.—(Kātyāyana in *Parāsharamādhava*, p. 169.)

SPECIAL RULES

53. याज्ञवल्क्य 2. 52] भ्रातृणामथ दम्पत्योः पितुः पुत्रस्य चैव हि ।
प्रातिभाव्यमृणं साक्ष्यमविभक्ते न तु स्मृतम् ॥

53. Such transactions as standing Surety, Debts and Deposing as witness, are not sanctioned either among brothers, or between husband and wife, or between father and son, unless they have become separated.—(Yājñavalkya 2. 52.)

NOTES

Until they have partitioned their property, these cannot stand surety to one another, and so forth. But this condition of 'being separated,' applies only to 'brothers' or to 'father and son,' not to 'husband and wife,' as between these latter there is no partition of property; it is purely as 'wife' that the wife has a right over the husband's property; hence property being held in common between husband and wife, their property cannot be 'partitioned.'—Nārada includes the 'giving and receiving' of gifts also under this prohibition.—(*Aparārka*.)

This prohibition refers only to cases where there is no mutual consent; where there is mutual consent, the said transactions may be permitted, even without the parties being separated. After separation, the transactions are permitted even without mutual consent .. It is not correct to say that there is no partition of property between husband and wife. As when Āpastamba speaks of such absence of partition, he refers to the fruits of religious acts, not to those of temporal acts, nor to property. In fact 'non-partition' can refer to only those acts to the performance of which the husband and wife are entitled jointly. Even the texts speaking of property being held in common between husband and wife cannot be taken as denying the possibility of partition between them;—all the difference that there is in the case of husband and wife is that there can be partition only when the husband wishes it and it cannot be done at the will of the wife.—(*Mitākṣarā*.)

54. नारद] साक्षित्वं प्रातिभाव्यं च दानं ग्रहणमेव च।
विभक्ता भ्रातरः कुर्युः नाविभक्ताः परस्परम् ॥

54. It is only when brothers are separated, not while they are united, that they can be witnesses or surety for, or make and receive gifts from, one another.— Nārada in *Smṛtichandrikā*, p. 319.)

PLEDGE

55. नारद 1. 117] अधिक्रियत इत्याधिः ।

55. That to which a title is given is a *Pledge*.—(Nārada 1. 117.) [Quoted in *Parāsharamādhava*, p. 173 and *Vīramitrodaya*, p. 305.]

NOTES

With a view to inspire confidence in regard to the money advanced, the Debtor deposits with the creditor, ornaments and such other things,—these are called ' Pledge.' ' *Ādhi*.'—(*Parāsharamādhava*, p. 174; *Vīramitrodaya*, p. 305.)

56. नारद 1. 24] कृतकालोपनेयश्च यावद्देयोद्यतस्तथा ॥

56. The Pledge is of two kinds—(*a*) that which must be redeemed within a specified time, and (*b*) that which must be retained till the debt has been discharged.—(Nārada, 1. 124.) [Quoted in *Mitākṣarā* on 2. 57; *Parāsharamādhava*, p. 173.]

NOTES

According to Asahāya, ' the Pledge to be redeemed within a specified time ' is again of two kinds : (1) It may be deposited with an *Ādhipāla* (' Keeper of the Pledge '), who is to return it on the Pledge being restored at the time agreed upon ; or (2) it may be delivered to the creditor on condition of its being returned after the lapse of a certain period, say five or ten years.—(*Sacred Books of the East.*)

At the time of depositing the Pledge, the Pledger stipulates—' I shall repay the debt at the time of the *Divāli* and redeem this pledge; failing this, the pledge will become your property ' ; this, is the first kind of pledge.—It is of the second kind when no such time is specified for resumption and the pledge remains with the pledgee till the debt is discharged ; and till then the pledge is to be kept in custody.—(*Mitākṣarā* 2, 57.)

57. नारद 1. 125] स पुनर्द्विविधः प्रोक्तो गोप्यो भोग्यस्तथैव च ।

57. A Pledge is again of two kinds—(1) one to be kept in custody and (2) one to be enjoyed.—(Narada 1. 125.)

NOTES

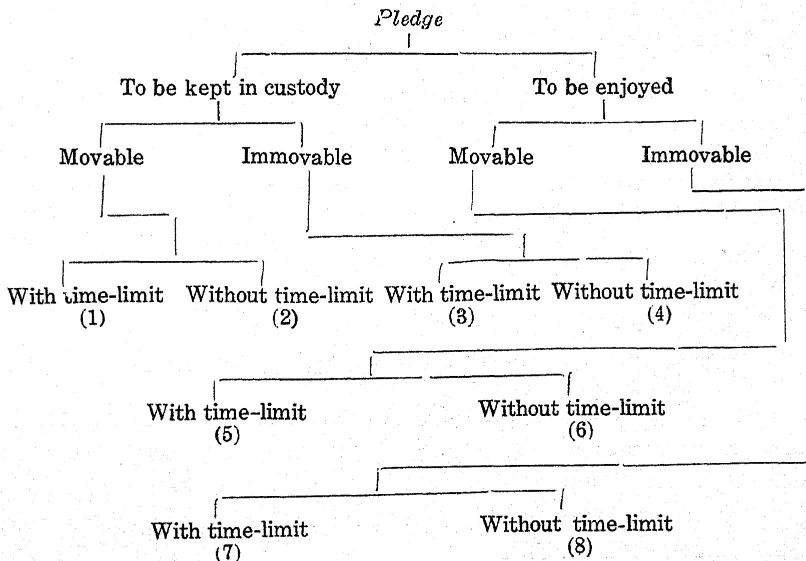
Each of the two kinds mentioned under (2) is of these two kinds.—(Kane in *Mayūkha.*)

Asahāya mentions houses and lands as 'pledges to be enjoyed.'

58. बृहस्पति 11. 17] आधिर्बन्धः समाख्यातः स च प्रोक्तश्चतुर्विधः ।
जङ्गमस्थावरश्चैव गोप्यो भोग्यस्तथैव च ।
यादृच्छिकः सावधिश्च लेख्यारूढोऽथ साक्षिमान् ॥

58. A Pledge is of four kinds—(1) moveable or immoveble, (2) to be kept in custody or to be enjoyed, (3) to be released at a specified time or at any time, and (4) stated in writing or only orally stipulated before witnesses.—(Bṛhaspati 11. 17.) [Quoted in *Parāsharamādhava*, p. 174.]

NOTES



59. प्रजापति] यो वै धनेन तेनैव परमाधिं नयेद्यदि ।
कृत्वा तदाधिलिखितं पूर्वं चापि समर्पयेत् ॥

59. If a pledgee desires to sub-pledge a pledge to a third party, he may do so; but for the same amount for which he is holding it himself; and he should execute a deed to that effect.—(Prajāpati.) [Quoted in *Parāsharamādhava*, p. 182; *Vīramitrodaya*, p. 317; and *Smṛtichandrikā*, p. 334.]

NOTES

'*Same amount,*'—*i.e.*, the Principal alone, without the interest that he may have earned on the loan.—This sub-pledging is permissible only after the pledgee's own Principal has been doubled. But by mutual consent between him and the original pledger it may be done also before that.—(*Parāshara-mādhava*, 182.)

60. हारीत] बन्धं यथा स्थापितः स्यात्तथैव परिपालयेत् ।
अन्यथा नश्यते लाभो मूलं नश्येद्व्यतिक्रमात् ॥

60. The Pledge must be preserved as it was delivered; otherwise the interest is forfeited.—By the loss of the Pledge, the Principal becomes lost.—(Hārīta.) [Quoted in *Vyavahāra-mayūkha*, p. 171; and *Vīramitrodaya*, p. 306; and *Smṛti-chandrikā*, pp. 321 and 324.]

NOTES

The meaning of the text as translated is in accordance with the interpretation of *Mayūkha*.—According to the interpretation of the *Vīramitrodaya* and *Smṛtichandrikā*, the meaning is that—'The pledge should be kept *as it was delivered* (*i.e.*, it should be kept as 'to be enjoyed,' if it was given as 'to be enjoyed,' and as 'to be kept' if it was given as 'to be kept'); otherwise (*i.e.*, if what was given as 'to be kept is 'enjoyed,' or *vice versa*), on account of the breach of the contract, the creditor loses his interest or his Principal. "If what was given 'as to be kept' is treated as 'to be enjoyed,' then the pledgee should be punished (as laid down by Manu 8. 150); while if what was given as 'to be enjoyed' is treated as 'to be kept,' then the pledgee loses his interest"—says *Smṛtichandrikā*, p. 325.

61. नारद 1. 125] उपचारस्तथैवास्य लाभहानिर्विपर्यये ।
प्रमादाद् धनिनस्तद्वदाधौ विकृतिमागते ॥

61. The Pledge should be treated as it was delivered; if on account of the negligence of the creditor, the Pledge is either lost or spoilt, there is forfeiture of interest.—(Nārada.) [Quoted in *Vivādaratnākara*, p. 22; *Vīramitrodaya*, p. 306 and *Smṛtichandrikā*, p. 327.]

NOTES

By spoiling a pledge the pledgee forfeits interest, *i.e.*, he loses the produce of the land and the use of the dwelling house. —(Asahūya in *Sacred Books of the East*).

The pledgee shall preserve the character of the article; if, through his negligence, the article is lost or spoilt, the creditor loses the interest.—(*Vivādaratnākara*, p. 22.)

There are two ways of pledging an immovable property : (*a*) the pledgee is to obtain the produce, after working for it, and (*b*) the pledgee is to obtain the produce, the work being done by the pledger. In either case, the pledge has to be restored on the payment of all dues, in the same condition in which it was pledged.—(Arthashāstra 3. 12.)

The above is the meaning of the text according to *Vīramitrodaya*. According to *Smṛtichandrikā* (p. 327), the text contains two statements :- the first is the same as what is contained in the text of Hārīta (sec. 6 above); and the second is to the effect that 'just as there is loss of interest when the Pledge is lost, so also is there if it is spoilt and is restored to the pledger in the spoilt form.' It proceeds- This rule applies only to cases where the interest accrued is sufficient to restore the pledge to its pristine form; '*negligence*'—*i.e.*, causes other than *use* by the pledgee; what is meant is that, if the Pledge is spoilt by such other causes, the Pledgee should either restore it to its pristine form or lose his interest; while if the pledge given for being kept has been spoilt by use of the Pledgee, then the pledgee shall both lose his interest and return the pledge after restoring its pristine form.— '*Spoilt*' stands for dimunition, transference, deterioration and such other contingencies which tend to alter the character of the pledge.—(*Smṛtichandrikā*, p. 327.)

62. नारद् 1. 126] विनष्टे मूलनाशः स्याद्दैवराजकृतादृते।

62. If the Peldge is lost, the Principal is forfeited, provided the loss was not caused by an act of God or of the King.—(Nārada 1. 126.)

NOTES

'*Act of God*' –*i.e.*, fire, floods, anarchy and so forth;—'*King*, *i.e.*, an act of the King, without any wrong act done by the pledgee.—(*Mitākṣarā* on 2 59.)

'*Act of God*'—*i.e.*, circumstances beyond human control.—(*Smṛtichandrikā*.)

63. विष्णु 6. 6.] आध्युपभोगे वृद्ध्यभावो दैवराजोपघातमृते विनष्टमाधिमुत्तमर्णो दद्यात्॥

63. If a pledge is enjoyed, there is no interest. The creditor must make good the loss of the pledge, unless the loss has been caused by an act of God or of the King.—(Viṣṇu 6.6.) [Quoted in *Vivādaratnākara*, p. 94.]

64. याज्ञवल्क्य 2. 59.] गोप्याधिभोगे नेा वृद्धिःसोपकारेऽथ हापिते ।
नष्टो देयेा विनष्टश्च दैवराजकृतादृते ॥

64. (A) If the pledge *to be kept* is used, there is no interest; so also if there is any loss or damage of the pledge given *to be used.*—(B) If a pledge is spoilt or destroyed, except by an act of God, or of the King, it must be made good by the Pledgee.—(Yājña. 2. 59.)

NOTES

(A) '*Pledge to be used.*'—such as utensils,—'*Damaged*' rendered unfit for use by some act of the creditor. *Sopakāra*—in the case of bullocks and such things, no interest is to be paid to the creditor.

(B) '*Naṣṭaḥ,*' *Spoilt*—broken or stolen or otherwise rendered entirely unfit for use. '*Vinaṣṭaḥ*'—totally destroyed. In both these cases the pledgee has to restore the pledge either by paying its price or by other means.—'(*Vivādaratnākara*, pp. 23 and 25.)

Naṣṭaḥ—what has been spoilt, altered for the worse,—should be restored to its original condition and then made over to the pledger.—(*Mayūkha*, p. 172).

If a pledge 'to be kept' has been '*naṣṭaḥ,*' changed for the worse, damaged, it should be restored to its original condition and made over to the pledger, and the interest, if any, becomes forfeited; if it is '*vinaṣṭaḥ,*' reduced to total destruction, then it shall be 'made good' to the pledger by paying its value —(*Mitākṣarā.*)

65. बृहस्पति 11. 21.] राजदैवोपघातेन यत्राधिर्नाशमाप्नुयात् ।
तत्रान्यं दापयेद्बन्धं सोदयं वा धनमृणी ॥

65. If a pledge be destroyed by an act of God or of the King, the debtor shall deliver another pledge, or repay the debt with interest.—(Bṛhaspati 11. 21; also Vyāsa) [Quoted in *Vivādaratnākara*, p. 25; *Smṛtichandrikā*, p. 322; *Vīramitrodaya*, p. 309.]

NOTES

'*Destroyed*'—rendered entirely unfit for use.—'*Another pledge*'—this must be in the shape of *land.*—(*Vivādaratnākara*, p. 25.)

Such pledges as House, Water-reservoir, Market, Grains, Cattle, Slave-girls, and Conveyances are liable to damage and destruction, through the negligence of the pledgee; in the event of such damage or destruction, the pledgee loses the pledge and the debtor is not to deliver another pledge.—(*Vivādaratnākara*, p. 35.)

If the destruction of the pledge has been due to 'an act of God or of the King,' then the debtor has to pay the amount due (principal with interest accrued to the day of the destruction), or to deliver another pledge.—The '*act of king*' meant here is the reckless act of an irresponsible autocrat. —(*Vīramitrodaya*, pp. 308-309.)

66. कात्यायन] न चेद्धनिकदोषेण निपतेद्वा म्रियेत वा ।
आधिमन्यं स दाप्यः स्याद्दणान्मुच्येत नार्णिकः ॥

66. If, without any fault of the creditor's, the pledge should sink in value or perish, then the creditor should be made to deliver another pledge ; he does not become absolved from the debt.—(Kātyāyana.) [Quoted in *Vyavahāramayūkha*, p. 173 ; *Vivādaratnākara*, p. 26 ; *Vīramitrodaya*, p. 309.]

NOTES

'*Nipatet*'—Sink in value (*Mayūkha*); be destroyed (*Vīra.*, p. 309).—'*Mriyeta*'—perish (*Mayūkha*); *i.e.*, *off*;—this refers to cattle alone (*Vīra.*, p. 309).—Both terms stand for 'becoming useless' (*Vivāda.* p. 26). '*Become absolved,*' —without paying the total amount due. - (*Vīra.*, 309).

In certain places the custom is that in the event of the pledged cattle perishing, the debtor loses the pledge and the creditor his principal, the account being squared by mutual loss. But long-establised custom is the sole authority for this.— (*Vivāda.*, p. 26.)

67. कात्यायन] आधीकृतं तु यत् किंचिद् विनष्टं दैवराजतः ।
तत्रर्णं सोदयं दाप्यो धनिनामधमर्णकः ॥

67. If, by an act of God or of the King, a pledged article should be destroyed, the debtor should be made to repay to the creditor the principal with accrued interest.—(Kātyāyana in *Smṛtichandrikā*, p. 321.)

68. स्मृति] स्रोतसापहृते क्षेत्रे राज्ञा चैवापहारिते ।
आधिरन्योऽथ कर्तव्यो देयं वा धनिने धनम् ॥

68. If the land (pledged) is washed away by floods, or is confiscated by the King,—the debtor should either deliver another pledge or repay the debt to the creditor. (Smṛti, quoted in *Mitākṣarā* on 2·59 ; also in *Vīramitrodaya*, p. 309.)

NOTES

This same rule applies to cases where the pledge has been stolen by thieves or otherwise lost (without any fault of the pledgee.—(*Smṛtichandrikā*, p. 322.)

69. नारद 1. 130 ⎫ रक्ष्यमाणोऽपि यत्राधिः कालेनेयादसारताम् ।
⎬ आधिरन्योऽथ वा कार्यो देयं वा धनिने धनम् ॥
याज्ञवल्क्य 2. 60 ⎭ आधेः स्वीकरणात् सिद्धिः, रक्ष्यमाणोऽप्यसारताम् ।
यातश्चेदन्य आधेयो धनभाग् वा धनी भवेत् ॥

69. [A pledge becomes a pledge as soon as it is accepted as such]—When a pledge, though kept with care, loses its value after a certain time, the debtor should either give another pledge or discharge the debt.—(Nārada 1. 130; also Yājña. 2. 60.)

NOTES

'*Loses its value*'—to the extent of being inadequate to make up the principal with accrued interest. Some people explain it as meaning 'its value becoming less than the amount made up of the principal along with interest for one year.' But this is open to question.—(*Vivādaratnākara*, also *Smṛtichandrikā*, p. 322.)

70. बृहस्पति 11.20] भुक्ते चासारतां प्राप्ते मूलहानिः प्रजायते ।
बहुमूल्यं यत्र नष्टम्रणिकं तत्र तोषयेत् ॥

70. A pledge having been used and rendered worthless by such use, the principal itself is lost; if a very valuable pledge is spoilt, the pledgee must satisfy the pledger.—(Bṛhaspati, 11. 20.) [Quoted in *Vivādaratnākara*, p. 25; *Smṛtichandrikā*, p. 328; *Vīramitrodaya*, p. 309.]

NOTES

'*Rendered worthless*'—rendered entirely incapable of being used.—'*Very valuable*'—*i.e.*, whose value exceeds the amount to be recovered from the pledger.—(*Vivādaratnākara*, p. 25.)

The loss to the pledger should be in proportion to the extent to which the pledge has been rendered useless; and in the case of the 'very valuable pledge,' the creditor should deduct his own principal and interest from the value of the pledge and pay the balance to the debtor; this is what is meant by 'satisfying' him, which does not mean that he should be paid any amount that he wants. This is made clear by Manu 8. 144.—(*Smṛtichandrikā*, p. 328; also *Vīramitrodaya*, p. 309.)

71. बृहस्पति] वृद्धिर्नश्यति हापिते ।

71. Interest is forfeited if a pledge is damaged.—(Bṛhaspati 11.19.) [Quoted in *Vīramitrodaya*, p. 306.]

72. व्यास] गृहीतृदोषान्नष्टश्चेत् बन्धो हेमादिको भवेत् ।
ऋणं सलाभं संशोध्यं तन्मूल्यं दापयेद्धनी ॥

72. If, through the fault of the pledgee, the pledge in the shape of gold and the like happen to be destroyed, the pledgee shall recover the loan with interest and shall be made to pay the price of the pledge.—[Quoted in *Aparārka*, p. 659; *Smṛtichandrikā*, p. 328; *Vīramitrodaya*, p. 309.]

NOTES

If he does not pay the price, he loses his principal.—(*Vīra.*, p. 309.)

This rule refers to a case where the loan with interest exceeds the price of the pledge —(*Smṛtichandrikā*, p. 328.)

73. कात्यायन] अकाममननुज्ञातमाधिं यः कर्म कारयेत् ।
भोक्ता कर्मफलं दाप्यो वृद्धिं वा न लभेत सः ॥

73. If the creditor, without the pledger's permission, takes work out of an unwilling pledge, then he should be made to pay the price of such work, or else he should forfeit the interest.—(Kātyāyana.) [Quoted in *Aparārka*, p. 659; *Vyavahāramayūkha*, p. 172; *Vīramitrodaya*, p. 308.]

NOTES

This refers to cases where the pledge is in the form of an animate object (slaves, bullocks, horses, etc.)—(*Aparārka*.)

'*Unwilling*'—This applies to slaves only.—'*Price*'—*wages*, in the case of slaves, and *hire*, in the case of horses, bullocks and the rest.—This rule refers to pledge given 'to be kept.'—(*Smṛtichandrikā*, p. 326.)

'*Made to pay*'—*by* the king, *to* the debtor.

74. कात्यायन] यस्त्वाधिं कर्म कुर्वाणं वाचा दण्डेन चर्मभिः ।
पीडयेद् भर्त्सयेच्चैवं प्राप्नुयात् पूर्वसाहसम् ॥

74. If the creditor should strike with sticks or leather thongs, or chide, the pledge working for him, he should be fined the first amercement.—(Kātyāyana.) [Quoted in *Parāsharamādhava*, p. 179, and in *Vīramitrodaya*, p. 308.]

NOTES

In the present context what this rule means is that the creditor receives no interest; the penalty is prescribed only by the way.—(*Vivādaratnākara*, p. 25.)

75. मनु 8. 143] न त्वेवाधौ सोपकारे कौसीदीं वृद्धिमाप्नुयात् ॥

75. When there is a profitable pledge, the creditor shall receive no interest on the loan.—(Manu 8. 143) [Quoted in *Vīramitrodaya*, p. 307; *Smṛtichandrikā*, p. 325.]

NOTES

'Pledge to be used' is of two kinds—(*a*) that in which the profit consists in some form of product of the pledged article, *e.g.*, the milch cow; and (*b*) that which is used as it stands, *e.g.*, wrought gold and such articles. The 'profitable pledge' referred to here stands for 'pledge to be used'; and the rule is that while such pledge is being used by the creditor, he shall receive no interest on the loan.—(*Medhātithi*.)

Vivādaratnākara (p. 307) explains the rule differently. '*Hāpite*' 'being damaged,' has to be supplied; the meaning being—'when a profitable pledge being used becomes damaged, the creditor forfeits the interest: this applies to cases of forcible use of the pledge.'

'*Profitable pledge*'—*i.e.*, 'pledge to be used.' In a case where the creditor has advanced the loan solely with a view to securing the 'use' of the pledge,—if, *by some mistake of his own*, he fails to use the article, he foregoes the enjoyment; but that does not entitle him to receive any interest; and in case his failure to use it is due to some act of the debtor, even then all that he is entitled to is to obtain from the debtor the use of the article pledged, and not any interest.—(*Smṛtichandrikā*, p 325.)

76. मनु 8. 144] न भोक्तव्यो बलादाधिर्भुञ्जानो वृद्धिमुत्सृजेत् ।
मूल्येन तोषयेच्चैनमाधिस्तेनोऽन्यथा भवेत् ॥

76. The pledge shall not be used by force; (*a*) using it thus, the creditor should renounce the interest; (*b*) he shall satisfy the other party with its price.—(Manu 8. 144.) [Quoted in *Vīramitrodaya*, p. 310; *Smṛtichandrikā*, p. 324.]

NOTES

(*a*) The preceding rule refers to cases where the 'use' or 'profit' is commensurate with the interest; the present rule refers to cases where the amount of Interest is large, while the 'profit' derived from the pledge is small; and in such cases, if the creditor uses the pledge by force, he loses the whole amount of interest. [Under 144 Medhātithi says that this rule refers to cases where the pledge has been wholly appropriated to his use by the creditor; cases where only partial use has been made are covered by the rule in 77; see below.]-(*b*) In a case where the pledge is in the form of clothes and such other things as are liable to perish by use,—if the creditor uses them forcibly,—he should satisfy the debtor with its price and himself receive the Interest.—This rule refers to cases where the debtor, at the time of delivering the pledge, distinctly says—'See that my pledge is not lost,—do not use it please,—in a few days I shall redeem it,'—and yet, the creditor, not minding it, does make use of the article.—(*Medhātithi*.)

'*Price*' —*i.e.*, the balance left after deducting the total amount of principal and interest due.—(*Vīra.*, p. 310.)

If the creditor, not minding the debtor's expostulations against using the pledge, goes on using it, he shall forfeit the whole Interest, even though he might have made very little use of it; but he does not forfeit the Principal; the texts that speak of the Principal are to be taken as referring to cases where the creditor has made extensive use of the pledge.—(*Smṛtichandrikā*, p. 324.)

According to Kullūka, this rule applies to a case where the pledge is deteriorated by use, in which case the pledgee must give as much money as will be required to restore the pledge to its original condition. According to Asahāya, on a similar verse in Nārada, the pledgee must satisfy the pledger by returning to him the profit made by using the pledge.—(Kane in *Mayūkha*, Notes.)

77. मनु 8. 150 } यः स्वामिनाऽननुज्ञातमाधिं भुङ्क्तेऽविचक्षणः ।
नारद 1. 128 } तेनार्धवृद्धिर्मोक्तव्या तस्य भोगस्य निष्कृतिः ॥

77. The creditor who, without permission, uses the pledge, shall have to remit half the interest as compensation for such use.—(Manu 8. 150, also Nārada 1. 128.) [Quoted in *Vīramitrodaya*, p. 307; *Vivādaratnākara*, p. 23.]

NOTES

This rule is applicable to cases where the creditor makes only partial use of the pledge,—distinguished from the cases of total appropriation, dealt with by the preceding rule. By partial use the article only becomes deteriorated; and hence the creditor forfeits half his interest. In a case however where the pledge consists of new and valuable ornaments or clothes, and on being used, they become spoilt, the user not only loses his interest, but has to make good the value of the articles.—Others have explained these rules as applying to the case where the pledge has not been redeemed even after the principal has been doubled, and as the user's fault in this case is insignificant, he is to lose only half his interest. But this view is not acceptable.— (*Medhātithi*.)

'*Half*'—stands here, not for the actual *half*, but for the amount that would be computed to be the monetary value of the *use* made by the creditor; otherwise if it were strictly *half* that was to be surrendered, then it would be a poor 'compensation' for extensive use.—This rule applies to cases where the use is not *forcible*.— (*Vīra.*, p. 307.)

Vivādaratnākara, (pp. 23—24) thus sums up the sense of Manu 8. 144 and 150 —(*a*) Where the creditor uses the pledge without permission, he forfeits half the interest; (*b*) Where, even though forbidden, he persists in using it by force, he forfeits the entire interest; (*c*) if he does not renounce the interest, then he should satisfy the pledger by paying him the computed monetary value of the use made by him.

There is another rule laying down that—'if the pledgee makes use of the pledge, without being authorised, he shall pay to the pledger the value of the use made and also a fine to the king.'

78. बृहस्पति 11.18] अशान्तलाभे च ऋणे तथाऽपूर्णेऽवधौ धनी।
येा भुङ्क्ते बन्धकं लोभात् न स लाभो भवेत् पुनः॥

78. If the creditor uses a pledge before interest has ceased to accrue on the loan (on its becoming equal to the Principal),—or before the specified time has expired, —interest shall cease.—(Bṛhaspati 11. 18.) [Quoted in *Vivādaratnākara*, pp. 22-23; *Vīramitrodaya*, p. 307.]

NOTES

The meaning is (*a*) that the pledge 'to be kept' may be used or enjoyed when the interest has ceased to accrue; (*b*) that when a pledge has been delivered under stipulated conditions regarding the time of release, it should not be enjoyed until interest has ceased to accrue; (*c*) that if it has been stipulated that the pledge may be enjoyed after the lapse of such and such time, then it may be enjoyed when that time has elapsed.— (*Vīramitrodaya*, p. 307.)

As regards the pledge 'to be kept,' it is to be enjoyed after interest has ceased to accrue; and when it has been delivered with a stipulation, it shall not be enjoyed until interest has ceased to accrue. As regards the pledge 'to be used,' if it has been delivered with the stipulation that it is not to be used during such and such time, then it can be used only after the lapse of that time.—(*Vivādaratnākara*.)

79. याज्ञवल्क्य 2. 59] गोप्याधिभोगे नो वृद्धिः।

79. If a Pledge 'to be kept' is used by the creditor, no interest is payable.—(Yājña. 2. 59.)

NOTES

See also Viṣṇu 6. 5.

This refers to cases of forcible use (see sec. 76).—(*Smṛtichandrikā*, p. 324.)

If a pledge 'to be kept' be spoilt, the pledgee has to restore it to its original condition, and then he can claim interest; but if he has made use of it, he cannot claim interest. If a pledge 'to be used'—such as copper utensils and the like—are made use of, then no interest is payable; even if the use made has been slight, and the interest accrued is a large amount, even then the interest is forfeited, on the ground of breach of contract.—(*Mitākṣarā*, 2. 59.)

If the pledge 'to be kept' is used, in contravention of the compact made, then the whole interest—even though it be a large amount—becomes forfeited.—This rule applies to cases of forcible use; see Manu 8. 144.—(*Parāsharamādhava*, p. 178.)

80. बृहस्पति 11. 26] गोप्याधिर्द्विगुणादूर्ध्वं कृतकालस्तथापरः।
श्रावयित्वा ऋणिकुले भोक्तव्यः समनन्तरम्॥

80. Notice having been given to the debtor's family, a pledge given for keeping may be used, after the Principal has been doubled ; so also may a pledge given for specified time, after the expiry of that time.—(Bṛhaspati 11.26 ; also Vyāsa quoted in *Mayūkha*. 174.) [Quoted in *Vivādaratnākara*, p. 33 ; *Vīramitrodaya*, p. 316.]

NOTES

This only lays down the justification for the using ; it does not mean that the creditor becomes the owner of the pledge. —(*Vīra.*, p. 316 ; also *Vivādaratnākara*, p. 33 ; also *Mayūkha*.) [This explanation is needed for reconciling this rule with Bṛhaspati 11. 25 ; see below, Sec. 84.]

81. मनु 8. 143] न चाधेः कालसंरोधान्निसर्गोऽस्ति न विक्रयः ॥

81. There shall be neither transference nor sale of the pledge by the pledgee merely by the lapse of time.—(Manu, 8. 143.) [Quoted in *Vivādaratnākara*, p. 31.]

NOTES

The meaning is that the pledge should not be handed over to another person, simply because it has remained with the pledgee for a long time. He should continue to use and derive profit from it, till the Principal has become doubled and been paid, when it shall be redeemed. When the doubled Principal has been paid, the pledge 'to be used' shall cease to be used and that 'to be kept' shall be restored to the pledger. — (*Medhātithi*.)

'*Transference*' being pledged to another person.—This rule refers to both kinds of pledge—'to be used' and 'to be kept.' That the 'transference or sale' prohibited here is that *by the pledgee* has been held rightly by the *Kalpataru*, the *Pārijāta* and the *Mitākṣarā*. This rule applies to cases where no time has been stipulated, while Yājña. 2. 58 (Sec. 86.) refers to those where a definite time has been stipulated ; hence there is no inconsistency between Manu and Yājñavalkya— (*Vivādaratnākara*, pp. 31-32.)

82. मनु 8. 145] आधिश्चोपनिधिश्चोभौ न कालात्ययमर्हतः ।
अवहार्यौ भवेतां तौ दीर्घकालमवस्थितौ ॥

82. Pledge and Deposit should not suffer much lapse of time ; as, being left over for a long time, they would be liable to appropriation.—(Manu 8. 145.)

NOTES

The 'time' for the redeeming of the pledge is just when the Principal, with accrued interest, has become doubled; and if the pledge is not redeemed then, there is 'lapse of time.'—'*Liable to appropriation*'; this is not meant to be literally true; it has been added only by way of a deterrent warning; as in fact, no such appropriation is possible (see next section).—Or, the statement may be taken to apply to the case where the debtor intentionally desists from redeeming the pledge, thinking that it is lying safer in the custody of another person.—Or, it may refer to a case where the debtor is allowing the pledge to remain unredeemed, even after the Principal has become doubled, with the wicked intention of defrauding the creditor of earning further interest on his capital, which he would do if the debtor redeemed the pledge and paid up the loan with interest.—(*Medhātithi.*)

83. मनु 8. 149] आधिः......नोपभोगेन जीर्यते ।

83. A pledge is not lost in consequence of being used.—(Manu 8. 149, and Vasiṣṭha 16. 18.)

84. बृहस्पति 11. 25] पूर्णेऽवधौ शान्तलाभे बन्धे स्वामी धनी भवेत् ।
अनिर्गते दशाहे तु ऋणी मोक्षितुमर्हति ।

84. When the time for payment has passed, and interest has ceased on becoming equal to the Principal, the creditor shall become the owner of the pledge; but till ten days have elapsed, the debtor would be entitled to redeem it.—(Bṛhaspati 11. 25). [Quoted in *Smṛtichandrikā*, p. 331; *Parāsharamādhava*, p. 180; *Vivādaratnākara*, p. 31.]

NOTES

'*Interest has ceased*'—in the case of such pledges as clothes and the like, the interest ceases on the trebling of the Principal.—This rule refers to cases where the pledge consists of such things as clothes and the like; the case of other pledges is dealt with in the following section.—(*Parāsharamādhava*, p. 180, also *Smṛtichandrikā*, p. 331.)—But *Vivādaratnākara* (p. 31) makes it applicable to cases where the debtor is in prosperous circumstances; and the following section refers to cases where the debtor's circumstances are not prosperous.

85. व्यास] हिरण्ये द्विगुणीभूते पूर्णे काले कृतेऽवधौ ।
बन्धकस्य धनी स्वामी द्विसप्ताहं प्रतीक्ष्य तु ॥
अतोऽन्तरा धनं दत्त्वा ऋणी बन्धकमाप्नुयात् ॥

85. When the Principal has been doubled, and the stipulated time has elapsed, in a case where a definite time-limit had been fixed, the creditor becomes owner of the pledge, after having waited for a fortnight; during this interval, if the debtor pays the debt, he may recover his pledge. - (Vyāsa.) [Quoted in *Aparārkā*, p. 658; *Smṛtichandrikā*, p. 330; *Vivādaratnākara*, p. 31.]

NOTES

This refers to cases where the pledge is in the form of gold and such things. -- (*Vivādaratnākara*, pp. 331-332.)

The limit of a 'fortnight' here prescribed, -as against the 'ten days' of the preceding section-is meant for cases where the debtor is not in prosperous circumstances. In a case where, without any stipulation, the pledge has been handed over only for the purpose of inspiring confidence, then the debt should be realised in the same manner as debt without pledge; and when the debt has been fully realised, the pledge should be restored to the debtor.-(*Vivādaratnākara*, p. 31.)

This rule prescribes two points of time where the pledgee becomes the owner: (1) when the loan has become doubled, and (2) when the stipulated time has elapsed.--(Kane, notes on *Mayūkha*.)

The implication of this rule is that before the lapse of the fortnight the pledge is not lost to the debtor. - (*Smṛtichandrikā*, p. 330)-'*The debt*'-*i.e.*, the principal with interest. Another implication of this rule is that ēven before the interest has ceased, if the debt is paid off, the pledge is restored to the debtor - (*Smṛtichandrikā*, p. 341.)

'*Doubled*'-This stands for *trebling* also, in regard to the cases of loan where the triple of the principal is the maximum laid down. - (*Vīramitrodaya*, p. 315.)

86. याज्ञवल्क्य 2. 58] आधिः प्रणश्येद् द्विगुणे धने यदि न मोक्ष्यते ।

86. A pledge becomes lost (to the debtor) if it is not redeemed after the Principal has been doubled.—(Yājña. 2. 58a.)

NOTES

The result in this case being that the pledgee retains the pledge and the debtor retains the money due from him.-(Kane in *Mayūkha* —notes.)

This rule refers to cases where the pledge is given 'to be kept' without any stipulation regarding time-limit; and where the value of the pledge is commensurate with the amount of the loan; hence in cases of unequal value, there is no forfeiture of the pledge (see Yājña. 2. 61) - (*Parāsharamādhava*, pp. 179—181.)

According to *Vivādaratnākara* (p. 30) the meaning of this rule is that a pledge is forfeited if, at the time of delivering it, the creditor has accepted the condition that the pledge would be forfeited if he failed to redeem it after the Principal had become doubled.

The *Arthashāstra* lays down certain penalties in connection with pledges :—

If the pledgee does not restore the pledge when the debtor comes to ask for it, he shall be fined 12 *Paṇas*.—(*Arthashāstra*, 3. 12.)

If the pledgee has denied the pledge itself, – and it is proved by the depositor, – the depositary shall be made to pay four times the value of the deposit to the depositor, and the fifth part of the value as fine to the king. – If he alter the deposit, or transfer it elsewhere, he shall pay the value of the deposit, and also a fine of the same amount.— (*Arthashāstra*, 3. 12.)

A pledge 'for use' can never be totally escheated ; nor can any interest accrue on it ; a deposit not 'for use' may become escheated ; and interest accrues on it. – (*Arthashāstra*, 3.12.)

87. **याज्ञवल्क्य** 2. 58] **काले कालकृतो नश्येत् ।**

87. If a pledge has been delivered with a stipulation regarding time-limit, it becomes forfeited on the lapse of that time.—(Yājña. 2.58b.)

NOTES

In this case, the pledge is forfeited on the expiry of the stipulated time, irrespectively of the fact of the principal having become doubled or not. – This refers to both the pledge 'to be kept' and that 'to be used.'—In all these cases a fortnight is allowed as the time of grace, even after the expiry of the stipulated time (see above). – (*Mitākṣarā.*)

Both kinds of pledge, if delivered with a stipulated time-limit, are forfeited *if they are not redeemed before the lapse of that time-limit.*— (*Parāsharamādhava*, pp. 179-180 and *Vivādaratnākara*, p. 30.)

88. **याज्ञवल्क्य** 2. 58] **फलभोग्यो न नश्यति ।**

88. The pledge given for the enjoyment of its usufruct is not forfeited.—(Yājña. 2. 58c.)

NOTES

'*Not forfeited*'—even on the lapse of a thousand years.—(*Vivādaratnākara*, p. 30.)

This refers to cases where no time-limit has been stipulated.— (*Parāsharamādhava*, pp. 179-180.)

The pledges here referred to are those in the shape of lands and such other things whose produce is enjoyed ; these may continue to be enjoyed by the creditor so long as his dues are not paid up.—(*Vīramitrodaya*, pp. 314-315.)

89. याज्ञवल्क्य 2. 61] चरित्रबन्धककृतं सवृद्ध्या दाययेद्धनम् ।

89. In a transaction where the character of the debtor has been the sole pledge, it is the Principal with accrued interest that has to be repaid [and there is no forfeiture of the pledge].—(Yājña. 2.61a.)

NOTES

By another explanation (suggested in *Mitākṣarā* and *Parāsharamādhava*, p. 181) the 'pledge' meant here is the 'spiritual merit acquired by such pious deeds as bathing in the Gaṅgā, offering of sacrifices and so forth.'

The cases referred to are those in which a nominal paltry pledge has been offered by the debtor and accepted by the creditor, who advances a large loan on the strength of the well-known character (honesty) of the debtor,—or in which, in view of the character of the creditor himself, the debtor has offered a pledge whose value is considerably more than what the principal with interest could ever reach.—In both these cases, even after the principal has become doubled, it is only the principal with interest that is to be paid and the pledge is never forfeited.—(*Mayūkha*, p. 175.)

The implication of this rule is that in such cases, the debtor cannot be absolved from the debt except by paying off the amount due.—(*Smṛtichandrikā*, p. 334.)

90. याज्ञवल्क्य 2. 61] सत्यङ्कारकृतं द्रव्यं द्विगुणं प्रतिपादयेत् ॥

90. In a case where the loan has been advanced on a solemn understanding, it is only the doubled Principal that should be repaid.—(Yājña. 2. 61.)

NOTES

'*On a solemn understanding*,'—to the effect that 'even after the Principal has become doubled, it is only this doubled Principal that would be payable and the pledge would not be forfeited.'—(*Mitakṣarā* and *Parāsharamādhava*, p. 181.)

By another interpretation given in *Mitākṣarā*, the meaning of the text is as follows—'In a sale-transaction in which something has been given as an '*Earnest*,'—if the sale goes off through the fault of the party receiving the earnest, he has to pay the double of that earnest to the person who had offered the earnest; and if it goes off through the fault of the person offering the earnest, then the earnest becomes forfeited.'

VALIDITY OF PLEDGE-TRANSACTION.

91. नारद] आधिस्तु द्विविधः प्रोक्तो जङ्गमः स्थावरस्तथा ।
सिद्धिरस्योभयस्यापि भोगो यद्यस्ति नान्यथा ।

91. A pledge—moveable as well as immoveable—is valid only when there has been actual use (or possession), not otherwise.—(Nārada) [Quoted in *Mayūkha*, p. 173; also Vyāsa in *Vivādaratnākara*, p. 35.]

NOTES

'*Is valid*'—*i.e.*, is to be regarded as a regular 'pledge';—'*otherwise*,'—*i.e.*, if there has been no possession, *i.e.*, so long as the article delivered as pledge has not been accepted by the pledgee and actually *used* by him (in the case of pledge 'to be used,') or 'kept in the *store-room*' (in the case of pledge 'to be kept');—the mere offering of the article by the debtor, without the pledgee's acceptance thereof, does not make it a 'pledge.'—(*Mayūkha*, p. 173.)

92. याज्ञवल्क्य 2. 60] आधेः स्वीकरणात् सिद्धिः ।

92. The Pledge becomes valid by acceptance (by being made his own, by the pledgee).—(Yājña. 2. 60.)

NOTES

'*Acceptance*'—'actual possession' or 'use'—is necessary in the case of a pledge, to give it validity against subsequent dealings with the article pledged; in regard to the rule that 'in case of pledge, gift or sale,' the prior transaction, if valid and complete, prevails over the later.—(Yājña; Kane.)

'*By acceptance*'—*i.e.*, by keeping in one's custody, in the case of pledge 'to be kept,'—and by using or enjoying, in the case of pledge 'to be enjoyed.'—(*Mitākṣarā* and *Vīramitrodaya*, p. 311.)

'*By acceptance*'—and not by mere execution of a deed, or by presence of witnesses, or by mere offering.—(*Vivādaratnākara*, p. 26; *Parāsharamādhava*, p. 176 and *Vīramitrodaya*, p. 311.)

93. बृहस्पति 11. 31] न भुङ्क्ते यः स्वमाधानं नादद्यान्न निवेदयेत् ।
प्रमीतसाक्षिकर्त्तृकं तस्य लेख्यमपार्थकम् ॥

93. When a man neither uses a pledge, nor takes it from the debtor, nor proclaims it (to others), any written document that he may have regarding the pledge is invalid; just like a document of which the executor and witness are both dead.—(Bṛhaspati 11.31.) [Quoted in *Vivādaratnākara*, p. 35; *Smṛtichandrikā*, p. 336.]

NOTES

'*Invalid*'—*i.e.*, not sufficient to establish the fact, even though complete in other respects.—'*Uses a pledge*,' this refers to pledges 'for use';—'*taes it*,' this refers to pledges 'for keeping';—'*proclaims*,'—this refers to both kinds of pledge.—(*Vivādaratnākara*, p. 35.)

94. कात्यायन] मर्यादाचिह्नितं क्षेत्रं ग्रामं वापि यदा भवेत् ।
ग्रामादयश्च लिख्यन्ते तदा सिद्धिमवाप्नुयात् ॥

94. A document regarding pledge is valid if there is entered the name of the field or village duly indicated by its

boundaries, as also the name of the village in which the field is contained and such other details as the exact location and so forth.—(Kātyāyana.) [Quoted in *Smṛtichandrikā*, p. 336.]

DISPUTES *re* PLEDGES.

95. कात्यायन] आधिमेकं द्वयोर्यस्तु कुर्यात् का प्रतिपद्भवेत् ।
तयोः पूर्वकृतं ग्राह्यं तत्कर्ता चौरदण्डभाक् ॥

95. If the same article has been pledged to two persons, what happens?—It should be his to whom it was pledged first; the pledger in this case should suffer the punishment of a thief.—(Kātyāyana.) [Quoted in *Vīramitrodaya*, p. 342.]

96. बृहस्पति 11·5] क्षेत्रमेकं द्वयोर्बन्धे दत्तं यत् समकालकम् ।
येन भुक्तं भवेत् पूर्वं तस्य तत् सिद्धिमाप्नुयात् ।

96. If the same plot of land, or any other article, has been given as pledge 'for keeping,' and the priority of either cannot be determined, then the article should belong to him who was the first to possess it.—[If both have possessed it for an equal time, it shall be held in common, or shared equally by them.]—(Bṛhaspati 1135.) [Quoted in *Vīramitrodaya*, p. 312.]

97. वसिष्ठ] तुल्यकाले निसृष्टानां लेख्यानामाधिकर्मणि ।
येन भुक्तं भवेत् पूर्वं तस्याधिर्बलवत्तरः ॥

97. When documents regarding a certain pledge are executed at the same time in favour of several persons, then that pledger has the prior claim on the pledge who may have been the first to possess it.—(Vasiṣṭha.) [Quoted in *Vyavahāramayūkha*, p. 173.]

98. विष्णु] ययोर्निक्षिप्त आधिस्तौ विवदेतां यदा नरौ ।
यस्य भुक्तिर्जयस्तस्य बलात्कारविनाकृता ॥

98. If the same article has been pledged to two persons, and there is a dispute between them, it should belong to him who has had possession of it without having recourse to force.—(Viṣṇu in *Aparārka*, p. 660.)

99. वसिष्ठ] यद्येकदिवसे तौ तु भोक्तुकामावुपागतौ ।
विभज्याधिः समस्तत्र भोक्तव्य इति निश्चयः ॥

99. In a case where the owner of the article has pledged it to two persons on the same day, but neither has taken possession of it,—if both apply for possession, the Pledge should be

equally divided between them.—(Vasiṣṭha in *Vyavahāra-mayūkha*, p. 173.)

100. विष्णु 5. 181-182] गोचर्ममात्राधिका भुवमन्यस्याधीकृतां तस्माद्-
निर्मोच्यान्यस्य यः प्रयच्छेत्स वध्यः। ऊनां चेत्
षोडश सुवर्णान् दाप्यः।

100. If one has pledged more than 'a bull's hide' of land to one creditor,—and without having redeemed it from him, pledges it to another, he shall suffer corporal punishment;—if the quantity be less, he shall pay a fine of 16 *Suvarṇas*.—(Viṣṇu 5. 181-182.) [Quoted in *Aparārka*, p. 659.]

NOTES

'*Bull' hide*'—'That much of land is called a *bull's hide*, on the produce whereof one man can subsist for one year,'—says Viṣṇu himself (5.183).

101. कात्यायन] आधानं विक्रयो दानं साक्षिलेख्यकृतं यदा।
एकक्रियानिबन्धेन लेख्यं तत्रापहारकम्॥

101. In the matter of Pledging, between two disputed transactions, if one is supported by documentary evidence and another by oral evidence, the former sets aside the latter.—(Kātyāyana.) [Quoted in *Parāsharamādhava*, p. 177; *Vīramitrodaya*, p. 312; *Vivādaratnākara*, p. 37; *Smṛtichandrikā*, p. 338.]

NOTES

'*By documentary evidence*'—*i.e.*, by a document duly attested by witnesses.—(*Vivādaratnākara*, p. 37.)

102. कात्यायन] अनिर्दिष्टं च निर्दिष्टमेकत्र च विलेखितम्।
विशेषलिखितं ज्याय इति कात्यायनोऽब्रवीत्॥

102. Between two transactions—both of which are supported by documentary evidence,—if in one the article pledged is definitely specified, while in the other it is not definitely specified,—the former supersedes the latter,—so says Kātyāyana.—(Kātyāyana.) [Quoted in *Vīramitrodaya*, pp. 312-313; *Vivādaratnākara*, p. 38.]

103. कात्यायन] यस्तु सर्वस्वमुद्दिश्य प्राक् पश्चान्नाम चिह्नितम्।
आदध्यात् तत्कथं नु स्यात्—चिह्नितं बलवत्तरम्॥

103. In the first instance the pledger borrows money, indicating indefinitely his entire 'property' as pledge,—

subsequently he specifically names and indicates by well-defined marks the property definitely pledged,—in such a case, if a dispute arises,—what happens is that the definite transaction supersedes the indefinite one.—(Kātyāyana.) [Quoted in *Vīramitrodaya*, p. 313.]

NOTES

'*The definite transaction.*'—This stands for subsequent transaction in general.—(see Yājña. sec. 104 below).—(*Vīramitrodaya*, p. 313.)

104. याज्ञवल्क्य 2.23b] आधौ दाने विक्रये च पूर्वा तु बलवत्तरा ।

104. In the matter of Pledges, Gifts and Sales, the prior transaction supersedes the subsequent ones.—(Yājña. 2. 23b.)

NOTES

The general rule laid down by Yājñavalkya (2. 23a is that 'in all disputes relating to property, the later transaction supersedes all preceding ones.' The present rule makes an exception in the case of pledges, gifts and sales.

105. वसिष्ठ] यः पूर्वोत्तरमाधाय किक्रीणीते तु तं पुनः ।
किमेतयोर्बलीयः स्यात्—प्राक्तनं बलवत्तरम् ॥

105. When a man, having pledged a property to one party, subsequently sells it to another,—the former transaction supersedes the latter.—(Vasiṣṭha.) [Quoted in *Parāsharamādhava*, p. 178.]

106. स्मृति] बलादकामं यत्राधिमनिर्दिष्टं प्रवेशयेत् ।
प्राप्नुयात् साहसं पूर्वमाधाता चाधिमाप्नुयात् ॥

106. In a case where the pledgee forcibly appropriates more than what has been pledged to him, he is to be fined the first amercement, and the pledge is to be restored to the pledger.—(Smṛti.) [Quoted in *Vivādaratnākara*, p. 38 and *Smṛtichandrikā*, p. 326].

NOTES

The debtor has the pledge restored to him without his having to pay the debt.—(*Vivādaratnakara*, p. 38.)

Even though the pledgee may have appropriated only a little more than what was pledged to him, yet he is to suffer the loss of his entire dues (Principal and Interest), if he has done so forcibly; if however he has done it, not openly and forcibly, but by deceit, then the amount of his dues that he will forfeit shall depend upon the extent and value of what he has misappropriated.—(*Smṛtichandrikā*, p. 326.)

107. बृहस्पति वसिष्ठ } कृतं यत्रैकदिवसे दानाधमनविक्रयम् ।
त्रयोऽपि तद्धनं धर्म्यं विभजेयुर्यथांशतः ।
उभौ क्रियानुसारेण त्रिभागेन प्रतिग्रही ॥

107. In a case where the same property has been sold, pledged and given away as gift on the same day,—all the three transactions are valid: the three parties shall divide the property among themselves; the first two, in the ratio of their respective claims, and the donee receiving the full third.—(*Bṛhaspati* 11. 36-37; *Vasiṣṭha* in *Parāsharamādhava*, p. 178 and *Smṛtichandrikā*, p. 340.)

NOTES

'*In ratio*, etc.'—*i.e.*, the two receivers should receive two parts.—(*Smṛtichandrikā*, p. 340.)

108. कत्यायन] आधिं दुष्टेन लेख्येन भुङ्क्ते यमृणिकाद् धनी ।
नृपो दमं दापयित्वा आधिलेख्यं विनाशयेत् ॥

108. If the creditor enjoys a pledge on the basis of a defective document, the king should destroy that document and make the creditor pay a fine.—(*Kātyāyana*.) [Quoted in *Smṛtichandrikā*, p. 329 and *Vīramitrodaya*, p. 310.]

NOTES

This refers to a case where the creditor has destroyed the pledge and yet, on the basis of his document presses the debtor for payment of his principal and interest.—(*Vīramitrodaya*, p. 310.)

109. कात्यायन] आधेः समधिकं द्रव्यं गृहीतं ग्राहकेण तु ।
अधिकं तव दास्यामि तद् दद्याद् धनिकस्य सः ॥

• 109. If the debtor has received from the creditor more than the amount covered by the pledge and has promised to pay the excess,—he must pay this excess.—(*Hārīta*.) [Quoted in *Smṛtichandrikā*, p. 322.]

REDEEMING OF THE PLEDGE

110. बृहस्पति] धनं मूलीकृतं दत्त्वा यद्याधिं प्रार्थयेदृणी ।
तदैव तस्य मोक्तव्यम् ।

110. When the debtor repays the debt and asks for the pledge, it must be restored to him.—(*Bṛhaspati* 11. 22.) [Quoted

in *Vivādaratnākara*, p. 27; *Parāsharamādhava*, p. 183; *Vīramitrodaya*, p. 319.]

NOTES

This refers to those cases of Pledge 'to be used' where no time-limit has been stipulated. - (*Vivādaratnākara*, p. 27.)

'*Debt.*'--In the case of pledge 'to be used,' the Principal only; and in the case of Pledge 'to be kept,' the Principal along with accrued interest.—(*Parāsharamādhava*, p. 183.)

Even before the Principal has become doubled, or before the stipulated time-limit has elapsed, if the debtor comes up to repay the debt, the creditor should restore the pledge, and he should not try to retain it for the purpose of earning more interest.—(*Vīramitrodaya*, p. 319.)

111. बृहस्पति] क्षेत्रादिकं यदा भुक्तमत्यन्तमधिकं ततः ।
मूलोदयं प्रविष्टं चेत् तदाधिं प्राप्नुयादृणी ॥
परिभाष्य यदा क्षेत्रं तथा तु धनिके ऋणी ।
त्वयैतद्वृत्तलाभेऽर्थे भोक्तव्यमिति निश्चयः ।
प्रविष्टे सोदये द्रव्ये प्रदातव्यं त्वया मम ॥

111. When land or other property has been enjoyed by the creditor, and a large income has accrued which is sufficient to cover the Principal and interest,— the debtor shall recover the pledge;—especially if the pledge has been delivered with the following stipulation—'This property shall be enjoyed by you after the interest has ceased; but when the Principal and interest has been realised, you shall restore the pledge to me.'—(*Bṛhaspati*, 11. 23-24.) [Quoted in *Parāsharamādhava*, p.184,]

NOTES

'*Interest has ceased*'—*i.e.*, after the Principal has become doubled. This rule applies to cases of pledge 'to be used.' The agreement with reference to such pledges may be of two kinds--(1) that the income derived from the use of the pledge should be taken in lieu of interest, or (2) that a portion of the income may be taken in lieu of interest and the residue be applied towards the reduction of the principal. In this latter case, the creditor will have to keep an account of the income.—(Kane in *Mayūkha*, Notes.)

'*Large income.*'—This term has been variously explained—(*a*) Larger than the principal (*Vīra.*, p 320); (*b*) Sufficient to cover the principal with accrued interest (*Vivādaratnākara*, p. 29); (*c*) over and above what is needed for the cultivation

of the field, etc., and is equal to principal and interest.—(*Smṛtichandrikā*, p.343); (*d*) equal to the amount of principal and interest, along with the amount needed for the cultivation of the fields, etc.—(*Parāsharamādhava*, p, 184.)

112. बृहस्पति] यत्राहितं गृहक्षेत्रं भोगेन प्रकर्षान्वितम् ।
तत्रर्णी नाप्नुयाद् द्रव्यं धनी चैव ऋणं तथा ॥
पूर्णे प्रकर्षे तत्स्वाम्यमुभयोरपि कीर्तितम् ।
अपूर्णेऽपि प्रकुर्यातां परस्परमतेन तौ ॥

112. When a plot of land or a house has been pledged 'for use,' and the period fixed for such use has not expired, the debtor cannot recover his property, nor the creditor his dues.—When the stipulated period has elapsed, both parties are at liberty to do so ; but even before the expiry of the period, they may make an arrangement with mutual consent.—(*Bṛhaspati* 11. 32-33.) [Quoted in *Mitākṣarā* on 2.64, and *Vivādaratnākara*, p. 33.]

NOTES

According to an explanation given in Mitākṣarā (2. 64), the term '*prakarṣa*' (which has been rendered as 'stipulated time' in accordance with the explanation provided by *Vivādaratnākara*, p. 33) is to be taken as meaning 'excess,' and the rule would in that case mean that 'when the profit derived from the pledge has exceeded the amount of interest, the creditor is not entitled to receive the Principal, and the debtor should receive back the pledge without paying it ; if however the interest has not been exceeded, and the pledge is not sufficient to yield the amount of interest, then the debtor cannot receive the pledge even on paying the principal, but by mutual consent, the creditor may restore the pledge even on the payment of the principal only.'

113. याज्ञवल्क्य 263.] विना धारणकाद्वापि विक्रीणीत ससाक्षिकम् ॥

113. If the debtor is absent, the creditor may sell the pledge in the presence of witnesses.—(Yājña. 2.63.)

NOTES

Yajñavalkya's rule refers to cases where it had been stipulated that 'Even after the doubling of the principal, the pledge shall not be forfeited.' In the absence of such stipulation, the general rule enunciated in Yājñavalkya 2. 58 applies and the pledge becomes forfeited after the principal has been doubled.—(*Vivādaratnākara*, p. 318.)

114. बृहस्पति] हिरण्ये द्विगुणीभूते मृते नष्टेऽधमर्णिके ।
द्रव्यं तदीयं सङ्गृह्य विक्रीणीत ससाक्षिकम् ॥
रक्षेद्वा कृतमूल्यं तु दशाहं जनसंसदि ।
ऋणानुरूपं परतो गृहीत्वाऽन्यत् तु वर्जयेत् ॥

114. After the Principal has become doubled, if the debtor dies or becomes lost, the creditor should sell the pledge in the presence of witnesses, and after having kept the sale-money with the community for ten days, he shall realise his dues and set aside the balance.—(Bṛhaspati in *Parāsharamādhava*, p. 181.)

NOTES

'*Lost*'— not heard of for a long time. — '*Dues*,' the double of his principal.—'*Set aside*'—hand over to the king—(*Parāsharamādhava*, p. 181), to the debtor's relations, failing them, to the king.—(*Vīramitrodaya*, pp. 316-317.)

115. विष्णु] गृहीतधनप्रवेशार्थमेव यत् स्थावरं दत्तं तत् गृहीतधनप्रवेशे दद्यात् ।

115. That immoveable pledge which has been delivered as restorable when the sum borrowed has been made good—the creditor must restore when that sum has been repaid.—(*Viṣṇu* 6. 9.) [Quoted in *Smṛtichandrikā*, p. 343.]

NOTES

The general rules have thus been formulated by Viṣṇu : –

(*a*) The pledge should be restored to the debtor when the interest has reached its maximum amount and has all been realised. – (*Viṣṇu*, 6.7.)

(*b*) The immoveable pledge is not to be restored till the Principal has been paid, unless there is special agreement to the contrary.—(*Viṣṇu* 9. 8.)

116. याज्ञवल्क्य 2. 62] उपस्थितस्य मोक्तव्यः ।

116. When the debtor comes to redeem the pledge, it should be restored to him.—(*Yājña*. 2.62a.)

NOTES

'*Comes*', to repay the debt and redeem the pledge.—(*Mitākṣarā*.)

117. याज्ञवल्क्य 2. 62] प्रयोजकेऽसति धनं कुले न्यस्याधिमाप्नुयात् ॥

117. If the pledgee is not there, the creditor may deposit the amount due from him with the pledgee's family and receive the pledge. – (*Yājña* 2. 62b.)

NOTES

'*Is not there*,'—is dead or gone abroad.

118. याज्ञवल्क्य 2.63] तत्कालकृतमूल्यो वा तत्र तिष्ठेदवृद्धिकः ॥

118. Or, the pledge shall be valued at the time and thenceforward remain without any further interest accruing.—(*Yājña.* 2. 63a.)

NOTES

When the debtor has deposited with the creditor's family the full amount of the debt, the restoration of the pledge or its price might await the return of the creditor.—(*Smṛtichandrikā*, p. 342.)

This applies to cases where the creditor is absent and there are no near relatives of his to whom the debt could be paid; or where the creditor being absent, the debtor wants to pay off the debt by selling the pledge.—(*Mitākṣarā.*)

At a time when the creditor is absent, and there is no one in his house who could receive payment,—if the debtor is desirous of repaying the debt by selling the pledge, then he shall have the pledge valued and let it remain with the creditor; but thenceforward the loan will cease to bear interest.—(*Parāsharamādhava*, p. 184.)

If the pledger happen to be away when the debtor comes to ask for it, the latter shall pay what is due from him to the elderly persons in the village and receive the pledge (from the pledgee's agent);—or the pledge may remain with the pledgee, but interest shall cease to accrue from that date; and a valuation of the pledge shall be made, with a view to guard against loss or damage.—(*Arthashāstra*, 3.12.)

119. याज्ञवल्क्य 2.64] यदा तु द्विगुणीभूतमृणमाधौ तदा खलु ।
मोच्य आधिस्तदुत्पन्ने प्रविष्टे द्विगुणे धने ॥

119. In a case where a pledge is given on the understanding that it is to be enjoyed after the principal has become doubled,—the pledge is to be restored as soon as the profit derived from the pledge has made up the amount of the doubled principal.—(*Yājña.* 2. 64.)

NOTES

According to the Mitākṣarā, this verse is applicable only where the income from the pledge is to be taken in lieu of interest and also in reduction of the principal; such a pledge has been called 'Kṣayādhi.'—(Kane, *Mayūkha*, Notes, p. 328.)

120. कात्यायन] आधाता यत्र न स्यात्तु धनी बन्धं निवेदयेत् ।
राज्ञस्ततः स विख्यातो विक्रेय इति धारणा ॥
सवृद्धिकं गृहीत्वा तु शेषं राजन्यथार्पयेत् ॥

120. If the debtor or his heirs cannot be traced (and the principal has become doubled), the creditor shall put up the pledge before the King; thereupon the pledge shall be publicly sold; out of the sale-proceeds, the creditor shall take his principal with interest and surrender the balance to the King.—(*Kātyāyana.*) [Quoted in *Aparārka*, p. 658; *Vīramitrodaya*, p. 311.]

NOTES

The balance is to be surrendered to the King only when no near relatives of the debtor can be found; if they can be found, the balance should be handed over to them.—(*Aparārka*, p. 658; *Vīramitrodaya*, p. 311.)

'*Or his heirs*'—This is added by *Vivādaratnākara* (p. 36) and *Smṛtichandrikā* (p. 234).

121. व्यास] फलभोग्यं पूर्णकालं दत्वा द्रव्यं तु सामकम् ।
बृहस्पति] [भोग्याधिर्मोक्तव्यः] ।

121. A pledge given 'for use' is to be recovered by the debtor on the payment of the principal, at the stipulated time.—(Vyāsa in *Parāsharamādhava*, p. 183; Bṛhaspati in *Mitākṣarā* 2. 64.)

NOTES

'*At the stipulated time,*' *i.e.*, as soon as the principal has become doubled.

122. व्यास] अतोऽन्तरा धनं दत्त्वा ऋणी बन्धमवाप्नुयात् ।

122. [In the event of there being a possibility of the pledge being lost], the debtor may recover the pledge by paying up the debt even before the stipulated time.—(Vyāsa in *Parāsharamādhava*, p. 183.)

SURETY

123. याज्ञवल्क्य 2. 53] दर्शने प्रत्यये दाने प्रातिभाव्यं विधीयते ।

123. Suretyship is (*a*) for appearance, (*b*) for trust and (*c*) for payment.—(*Yājña.*, 2. 53a; Viṣṇu 6. 41 and *Nārada* 1. 118.)

124. बृहस्पति] दर्शने प्रत्यये दाने ऋणिद्रव्यार्पणे तथा ।
चतुष्प्रकारः प्रतिभूः ।

124. The Surety is of four kinds :—(*a*) for appearance, (*b*) for trust, (*c*) for payment, and (*d*) for delivering the assets of the debtor.—(*Bṛhaspati* 11. 39.) [Quoted in *Aparārka*, p. 655.]

125. हारीत] अभये प्रत्यये दाने उपस्थानेऽर्थदर्शने ।
पञ्चस्वेषु प्रकारेषु ग्राह्यो हि प्रतिभूर्बुधैः ॥

125. There are five kinds of surety :—(*a*) for fearlessness, (*b*) for trust, (*c*) for payment, (*d*) for appearance and (*e*) for delivering the assets.—(Hārīta in *Smṛtichandrikā*, p. 346.)

126. व्यास] लेख्येऽकृते च दिव्ये वा दानप्रत्ययदर्शने ।
गृहीतबन्धोपस्थाने ऋणिद्रव्यार्पणे तथा ॥

126. In the absence of documents and ordeals, there should be five kinds of surety :—(*a*) for payment, (*b*) for trust, (*c*) for appearance, (*d*) for the presentation of the delivered pledge, and (*e*) for delivering the assets of the debtor,—(Vyāsa in *Smṛtichandrikā*, p. 347.)

127. कात्यायन] दानोपस्थानवादेषु विश्वासशपथाय च ।
लग्नकं कारयेदेवं यथायोगं विपर्यये ।

127. In cases of dispute, a surety should be taken—(*a*) for payment, (*b*) for appearance, (*c*) for carrying out proceedings, (*d*) for trust, and (*e*) for swearing.—(Kātyāyana in *Smṛtichandrikā*, p. 347.)

(See 136 below where the reading for '*kārayet*' is '*dāpayet*.')

NOTES

Yājñavalkya mentions only three, because there is not much difference between 'payment' and 'delivery of assets,' which are mentioned separately by Bṛhaspati; the difference between the two is that 'payment' stands for paying out of one's own property, while 'delivering of assets' stands for the bringing up of the debtor's property and handing it over to the creditor.—(*Vīramitrodaya*, p. 322.)

Fearlessness (Hārīta)—preventing complications and difficulties from arising.

'*In the absence of documents, etc., etc.*'—(Vyāsa.)—In all disputes there are two kinds of evidence—visible or natural (documents) and invisible or supernatural (ordeals); where the lapse of time makes both these impossible, surety has to be taken.—(*Smṛtichandrikā*, p. 347.)

'*Carrying out proceedings*' (Kātyāyana)—*i.e.*, a surety taken from the litigants for the due carrying out of the decretal order.

The Surety in the case of pledge 'for helping' is called *Ādhipāla*; that in the case of pledge 'for use' is called '*Bhuñjāpaka*' and that in the case of exceptionally valuable pledge is called '*Pratyarpaka*'; all these are included under one or other of those enumerated above.—(*Smṛti-chandrikā*, p. 347.)

128. बृहस्पति] आहैको दर्शयामीति, साधुरेषोऽपरोऽब्रवीत् ।
दाताऽहमेतद्द्रविणम्, अर्पयाम्यपरो वदेत् ॥

128. (*a*) The surety for appearance undertakes to 'produce the debtor when required'; (*b*) the surety for trust guarantees that 'the debtor is a respectable person'; (*c*) the surety for payment undertakes to 'pay the debt,' and (*d*) the surety for delivering the assets undertakes to 'deliver the assets of the debtor.' (*Bṛhaspati* 11. 40.) [Quoted in *Aparārka*, p. 655; *Mitākṣarā* 2. 53.)

NOTES

'*For appearance*'—'I shall produce him whenever he is required';—'*for trust*'—'you please advance the loan to him on my trust, he will not cheat you, he belongs to a respectable family';—'*for payment*'—'If he does not pay, I shall pay.'—(*Mitākṣarā*.)

WHO CANNOT BE SURETY ?

129. कात्यायन] न स्वामी न च वै शत्रुः स्वामिनाऽधिकृतस्तथा ।
निरुद्धो दण्डितश्चैव संशयस्थश्च न क्वचित् ॥
नैव रिक्थी न मित्रं च न चैवान्तेनिवासिनः ।
नैव राजनियुक्तश्च ये च प्रव्रजिता नराः ॥
नाशक्तो धनिने दातुं दंडं राज्ञे च तत्समम् ॥
जीवन्नापि पिता यस्य तथैवेच्छाप्रवर्तकः ।
नाविज्ञातो ग्रहीतव्यः प्रतिभूः स्वक्रियाम्प्रति ॥

129. Master, enemy, one appointed by the master, one who is in prison, one undergoing punishment, one accused of crime (or one on the point of death), one holding joint property with either party, a friend, life-long students (or pupils), King's servant, Renunciates, one unable to pay the dues to the creditor or the fines to the King, one whose father is alive, one who is too free in his actions, one who is not known,—these persons should not be accepted as surety.—(Kātyāyana.) [Quoted in *Vivādaratnākara*, p. 39, and *Vīramitrodaya*, p. 330.]

130. याज्ञवल्क्य 2. 54] भ्रातृणामथ दम्पत्योः पितुः पुत्रस्य चैव हि ।
प्रातिभाव्यमृणं साक्ष्यमविभक्ते न तु स्मृतम् ॥

130. 'Among brothers, between husband and wife, between father and son,—there can be no suretyship, borrowing or lending or witnessing, so long as they have not been separated.—(Yājña. 2. 54.)

NOTES

Nārada adds 'giving and accepting gifts' also.

SPECIAL RULES

131. बृहस्पति 11. 41] आद्यौ तु वितथे दाप्यौ तत्कालावेदितं धनम् ।
उत्तरौ तु विसंवादे ॥

131. If the debtors fail in their engagements, the first two kinds of surety (for appearance and for trust) must pay the sum lent at the appointed time, the other two kinds of sureties for 'payment' and for 'delivering the debtor's assets,' must pay when the debtors break their promise.—(Bṛhaspati 11. 41.) [Quoted in *Vivādaratnākara*, p. 40.[

132. कात्यायन] दर्शनप्रतिभूर्यस्तं देशे काले प्रदर्शयेत् ।
यद्यसौ दर्शयेत्तत्र मोक्तव्यः प्रतिभूर्भवेत् ॥

132. The surety for appearance should produce the debtor at the time and the place at which he may be wanted by the creditor.—If he produces him, he shall be absolved from his responsibility.—(Kātyāyana in *Smṛtichandrikā*, p. 348.)

133. मनु 8.158] यो यस्य प्रतिभूस्तिष्ठेद्दर्शनायेह मानवः ।
अदर्शयन् स तं तस्य यतेत स्वधनादृणम् ॥

133. When a man has stood surety for the appearance of another,—if he fails to produce him when required, he shall make good the debt out of his own property.—(Manu 8. 158.)

NOTES

'*Debt*'—with interest—(*Smṛtichandrikā*, p. 348.)

'*Debt*'—stands for *objects in dispute* in general. The meaning therefore is that in suits relating to any property, the surety should have to make good that property; in the case of defamation, assault, adultery and other offences, if the surety has given the undertaking—'If I do not produce the accused

I shall pay such and such a sum'—then he shall have to pay that sum ; but in the event of there being no such undertaking, he should be made to pay only the fine that the King imposes upon the accused. —(Medhātithi.)

134. कात्यायन] दर्शनप्रतिभूर्यत्र काले देशे न दर्शयेत् ॥
निबन्धमावहेत्तत्र राजदैवकृताद् ऋते ॥

134. If the surety 'for appearance' fails to produce the debtor at the time and the place required, he should pay the dues, except when the failure has been due to an act of God or King.—(Kātyāyana in *Vivādaratnākara*, p. 41 and in *Smṛtichandrikā*, p. 349.)

135. नारद 1.119] ऋणिष्वप्रतिकुर्वत्सु प्रत्यये वाऽथ हापिते ।
प्रतिभूस्तदृणं दद्यादनुपस्थापयंस्तथा ॥

135. (*a*) If the debtor fails to pay the debt, the surety 'for payment' should pay it ; (*b*) if the debtor prove untrue to the trust reposed in him, the surety 'for trust' shall pay the debt ; (*c*) if the surety 'for appearance' fails to produce the debtor, he shall pay the debt.—(Nārada 1. 119.) [Quoted in *Vīramitrodaya*, p. 324 ; *Vivādaratnākara*, p. 41.]

NOTES

(*c*) The term '*anupasthāpayan*' has been taken by *Vīramitrodaya* (p. 324) to include—(1) the case where the surety 'for appearance' fails to produce the debtor and also (2) that where he fails to deliver the assets of the debtor.

136. कात्यायन] दानोपस्थानविश्वासविवादशपथाय च ।
लग्नकं दापयेद्देयं यथायोगं विपर्यये ॥

136. When there is a failure of the engagement, the surety—for payment or appearance or trust or ordeal—should be made to pay the debt.—(Kātyāyana in *Vivādaratnākara*, p. 41.)

137. कात्यायन] काले व्यतीते प्रतिभूर्यदि तन्नैव दर्शयेत् ।
निबन्धं दापयेत्तत्र, प्रेते चैवं विधिः स्मृतः ॥

137. If on the lapse of the stipulated time, the surety fail to produce the debtor, he should be made to pay the debt ; so also if the debtor dies.—(Kātyāyana in *Vivādaratnākara*, p. 42 ; *Smṛtichandrikā*, p. 349.)

NOTES

The above rendering is in accordance with the *Smṛtichandrikā*.—According to the *Vivādaratnākara* the rule applies to the time when the state of things due to the act of 'God or King' has ceased; according to *Vīramitrodaya*, p. 323, to the lapse of the time given to the surety for searching out the debtor.

138. बृहस्पति 11.42] नष्टस्यान्वेषणे कालं दद्यात् प्रतिभुवे धनी ।
देशानुरूपतः पक्षं मासं सार्धमथापि वा ॥

138. The creditor shall allow the surety time to search for the absconding debtor,—a fortnight, a month or a month and a half, according to the distance of the place.—(Bṛhaspati 11. 42 ; in *Smṛtichandrikā*, p. 348.)

139. कात्यायन] नष्टस्यान्वेषणार्थन्तु देयं पक्षत्रयं परम् ।
यद्यसौ दर्शयेत् तत्र मोक्तव्यः प्रतिभूर्भवेत् ॥

139. For searching out the absconding debtor, three fortnights is the maximum time that should be allowed. If the surety produces him by that time, he should be absolved from his responsibility.—(Kātyāyana in *Vyavahāramayūkha*, p.176 ; *Smṛtichandrikā*, p. 348.)

140. बृहस्पति 11.43] नात्यन्तं पीडनीयाः स्युर्ऋणं दाप्याः शनैः शनैः ।
स्वसाक्ष्ये न नियोज्याः स्युः ।

140. Sureties should not be excessively harassed ; they should be made to pay the debt by easy instalments; they should not be attacked when the debtor is present.—(Bṛhaspati, 11. 43.) [Quoted in *Vivādaratnākara*, p. 45.]

141. पितामह] आधिपालकृतस्त्वाधिभिन्नकालोपलक्षणम् ।
न चेत् स्वधनिने दत्तस्तस्याधेस्तैः समर्पणम् ॥

141. If a surety has said to the creditor—'This man is unable to deliver the required pledge just at this time, I undertake to deliver it to you if he fails to do it,'—then, in the event of the debtor failing to deliver the pledge, the surety shall deliver it.—(Pitāmaha in *Smṛtichandrikā*, p. 349 and *Vīramitrodaya*, p. 324.)

NOTES

This rule applies to all kinds of surety, 'for fearlessness,' 'for trust,' and so forth; in whatever way there be a failure of the engagement, the surety shall make it good.—(*Vīramitrodaya*, p. 324.)

142. हारीत] विश्वासार्थं कृतस्त्वाधिर्न प्राप्तो धनिना यदा ।
प्रापणीयस्तदा तेन देयं वा धनिने धनम् ॥

142. If the pledge offered as security has not been delivered by the debtor, then, it shall be delivered by the surety ; or else he shall pay the debt.—(Hārīta in *Vīramitrodaya*, p. 324.)

143. हारीत] खादको वित्तहीनश्चेत् लग्नको वित्तवान् यदि ।
मूलं तस्य भवेद् देयं न वृद्धिं दातुमर्हति ॥

143. If the debtor is without adequate property (to repay the debt), while the surety is rich, then the latter will be liable to pay the principal ; but he shall not be liable to pay the interest.—(Hārīta in *Smṛtichandrikā*, p. 350 ; in *Vīramitrodaya*, pp. 310 and 326, and in *Mitākṣarā* on 2. 54 and *Parāsharamādhava*, p. 186.)

NOTES

This text has been variously explained : (1) The above is in accordance with the *Mitākṣarā*, according to which the meaning is that when the debtor is poor and the surety is rich,—if the latter dies, his sons shall pay the debt but not the interest ;—(3) according to *Smṛtichandrikā* p. 350, it means—' 'when the creditor has destroyed a valuable pledge, if he is unable to satisfy the debtor by paying him its price, then the surety is to satisfy the debtor by paying the price to him.'

144. हारीत] द्विगुणं त्रिगुणं वापि यः साधयति लग्नकम् ।
राजगामि तु तद् द्रव्यं साधको दण्डमर्हति ॥

144. If the creditor should forcibly exact double or treble the amount of his principal by realising the interest the sum thus realised shall be surrendered to the King and the man who had realised it shall be liable to punishment.—(Hārīta in *Vīramitrodaya*, p. 310.)

145. कात्यायन] देशकालौ क्रियाकारे यद्यल्पमपि लङ्घयेत् ।
साधितं प्रतिभूर्दाप्यस्तमर्थं साधिते विधिः ॥

145. If the surety ' for swearing ' fails to have the ordeal carried out at the stipulated time and place, he should be made to pay the amount in dispute.—(Kātyāyana in *Vivādaratnākara*, p. 42.)

146. याज्ञवल्क्य 2. 55] बहवः स्युर्यदि स्वांशैर्दद्युः प्रतिभुवो धनम् ।
विष्णु, नारद एकच्छायाश्रितेष्वेषु धनिकस्य यथारुचि ॥

146. If there are many sureties jointly bound, they should pay the debt due from the debtor in proportion to their shares; but when they are all equally bound severally, then any one of them may have to pay the whole, at the pleasure of the creditor.—(Yājña. 2. 55; also Viṣṇu 6. 42; and Nārada 1. 120.)

NOTES

'*Bound equally*'—When each of them has agreed 'to pay the whole debt,' any one may be called upon to pay up the whole amount; when they have guaranteed to pay, each according to a stipulated share, then the amount paid by them shall be proportionate to the shares previously agreed upon.—(*Mayūkha*, p. 177.)

This same rule applies to the case of sureties for 'appearance' and for 'trust.'—(*Mitākṣarā*.)

If the creditor does not express any wish as to who should pay, then all the sureties shall pay in equal shares.—(*Smṛtichandrikā*, p. 355.)

147. पितामह] यो यस्य प्रतिभूर्भूत्वा मिथ्या चैव तु गच्छति ।
धनिकस्य धनं दाप्यो राज्ञा दण्डं च तत्समम् ॥

147. If a man, having stood surety for some one, proves false to his trust, he should be made to pay the debt to the creditor and a fine equal to it to the King.—(Pitāmaha in *Smṛtichandrikā*, p. 356.)

148. पितामह] कुर्याच्चेत्प्रतिभूर्वादमृणिकार्थेऽर्थिना सह ।
सोपसर्गस्तदा दण्ड्यो विवादाद्द्विगुणं धनम् ॥

148. If the surety, along with the debtor, disputes the claim of the creditor,—and he is found to be dishonest,—he should be fined twice the amount under dispute.—(Pitāmaha in *Smṛtichandrikā*, p. 356.)

LIABILITY OF THE SON AND HEIR OF THE SURETY

149. याज्ञवल्क्य 2. 53] (दर्शने प्रत्यये दाने प्रातिभाव्यं विधीयते ।)
आद्यौ तु वितथे दाप्यावितरस्य सुता अपि ॥

149. (See sec. 123) In cases of failure of the engagement, the surety 'for appearance' and 'for trust,' themselves should be made to pay the debt; in that of the surety 'for payment,' his sons also are liable.—(Yājña. 2. 53.)

NOTES

In the case of the former two kinds of surety, the sons would not be liable. In the case of the last kind of surety also, the sons alone could be liable, not the grandsons.—(*Vīramitrodaya*, p. 322 and *Mitākṣarā*.)

150. याज्ञवल्क्य 2. 54] दर्शनप्रतिभूर्यत्र मृतः प्रात्ययिकोऽपि वा ।
मनु 8. 160 न तत्पुत्रा ऋणं दद्युः, दद्युर्दानाय ये स्थिताः ॥

150. If the surety 'for appearance,' or the surety 'for trust' is dead, his sons should not be called upon to pay the debt. But if the surety were for 'payment,' his sons should be liable to pay.—(Yājña. 2. 54; also Viṣṇu 6. 41; Manu 8. 160.)

NOTES

The reiteration of the son's liability in the case of the surety 'for payment' is meant to preclude the liability of the grandsons—the *sons* alone being liable.—(*Aparārka*.) Gautama (12. 41) says—'The son shall not be made to pay the surety-money.'

151. बृहस्पति 11. 4] तौ बिना तत्सुतौ तथा ।

151. In cases of failure of the engagement, if the surety 'for payment' or the surety 'for delivering the debtor's assets' happen to be absent, his son should be made to pay.—(Bṛhaspati 11. 4.)

NOTES

See 131 above, of which this text is the last clause.

'*Absence*'—by death or by reason of going abroad;—'*failure of engagement*'—on the debtor refusing to pay up through wickedness.—(*Smṛtichandrikā*, p. 352.)

152. व्यास] विप्रत्यये लेख्यदिव्यदर्शने चाकृते सति ।
ऋणं दाप्याः प्रतिभुवः पुत्रं तेषां न दापयेत् ।
दानवादप्रतिभुवौ दाप्यौ तत्पुत्रकौ तथा ॥

152. In the event of the failure of the trust, if no document is adduced, nor an ordeal gone through, the sureties 'for trust' should be made to pay the debt; but not the sons of the sureties. But in the case of the sureties for 'payment' or 'for proceedings,' their sons should pay.—(Vyāsa in *Smṛtichandrikā*, p. 352.)

153. मनु 8. 160] दानप्रतिभुवि प्रेते दायादानपि दापयेत् ॥

153. On the death of the surety 'for payment,' his heirs should be made to pay.—(Manu 8. 160.)

NOTES

It is only if the father had stood surety 'for payment' that the son shall pay, not if he had stood any other kind of surety.—(*Medhātithi.*)

154. मनु 8. 162] प्रतिभुवि प्रेते—
निरादिष्टधनश्चेत्तु प्रतिभूः स्यादलंधनः ।
स्वधनादेव तद्दद्यान्निरादिष्ट इति स्थितिः ।

154. In the event of the death of the surety other than that 'for payment'—if the surety were one to whom property had been made over, and who thus had enough property, then the debt shall be paid by (the son of) the man to whom the property had been made over, out of that same property, such is the settled rule.—(Manu 8. 162.)

NOTES

The payment is meant to be made by the son of the surety.—

'*Made over*'—by the debtor, with the instruction 'In the event of my being unable to pay the debt, please pay it out of this.'—(*Medhātithi.*)

155. कात्यायन] गृहीत्वा बन्धकं यत्र दर्शनस्य स्थितोऽभवत् ।
विभाव्य वादिना तत्र दाप्यः स्यात्तदृणं सुतः ॥

155. If a man had stood surety 'for appearance' after having taken some property by way of pledge from the debtor, then (in the absence of the father) the son should be made to pay the debt.—(Kātyāyana in *Vivādaratnākara*, p. 43.)

NOTES

This refers to the surety 'for appearance.'—(*Aparārka*, 2. 53; *Vivādaratnākara*, p. 43.)—It refers, not only to the surety 'for appearance,' but also to the surety 'for trust.'—(*Smṛtichandrikā*, p. 533.)

156. व्यास] ऋणं पैतामहं पौत्रः प्रातिभाव्यागतं सुतः ।
समं दद्यात्तत्सुतौ तु न दाप्याविति निश्चयः ॥

156. The grandson should pay his grandfather's debt, without interest; the son also shall pay, without interest, the

surety-money due from his father ; but the sons of these (grandson and son) should not be made to pay the debt and the surety-money respectively.—(Vyāsa in *Vivādaratnākara*, p. 44 ; *Smṛtichandrikā*, p. 354 ; *Aparārka*, p. 656.)

NOTES

The grandson is to pay all his grandfather's debts, with the exception of any surety-money that might be due from him.—(*Vīramitrodaya*, p. 325.)

This rule applies to cases where the surety has stood surety without receiving any monetary consideration, as distinguished from cases falling under 155 above.—(Kane.)

157. बृहस्पति] प्रातिभाव्यागतं पौत्रैर्दातव्यं न तु तत् क्वचित् ।
कात्यायन| पुत्रेणापि समं देयमृणं सर्वत्र पैतृकम् ।

157. The grandson is never to be made liable for any surety-money that may be due from his grandfather ; but the son shall pay, without interest, the surety-money due from his father.—(Bṛhaspati in *Smṛtichandrikā*, p. 355 ; attributed to Kātyāyana in *Vivādaratnākara*, p. 44.)

158. कात्यायन] एकच्छायाप्रविष्टानां दाप्यो यस्तत्र दृश्यते ।
प्रोषिते तत्सुतः सर्वं पित्रंशात्तु मृते सुतः ।

158. When several persons have stood surety jointly, that one should be made to pay who happens to be present ; in the event of his having gone abroad or died, his son should be made to pay what would fall to his father's share.—(Kātyāyana in *Mayūkha*, p. 178.)

THE SURETY TO RECOVER WHAT HE MAY HAVE PAID AS SURETY-MONEY

159. कात्यायन] यस्यार्थे येन यद्दत्तं विवादाभ्यर्थितेन तु ।
साक्षिभिर्भाविते चैव प्रतिभूस्तदवाप्नुयात् ।।

159. If a surety has been made to pay anything on behalf of the debtor, he shall recover it from the person for whom he had stood surety,—the said payment being proved by witnesses.—(Kātyāyana in *Smṛtichandrikā*, p. 356 ; and in *Vivādaratnākara*, p. 46.)

NOTES

The sum is to be recovered without interest, if it is done within a month and a half ; after that, double the amount is to be recovered (see next section).—(*Vivādaratnākara*, p. 46.)

160. बृहस्पति] प्रातिभाव्यं तु यो दद्यात् पीडितः प्रतिभावितः ।
कात्यायन] त्रिपक्षात् परतः सोऽर्थं द्विगुणं लब्धुमर्हति ॥

160. When the surety, being harassed, has paid a proved debt vouched for by him,—the debtor shall pay him twice as much, after the lapse of a month and a half.—(Bṛhaspati 11. 44; also Kātyāyana in *Vivādaratnākara*, p. 45 and *Smṛtichandrikā*, p. 357.)

161. याज्ञवल्क्य 2. 56.] प्रतिभूर्दापितो यत्र प्रकाशं धनिने धनम् ।
द्विगुणं तत्र दातव्यमृणिकैस्तस्य तद् भवेत् ॥

161. If the surety has been made to pay the debt openly to the creditor, the double of that amount shall be paid to him by the debtor.—(Yājña. 2. 56; Viṣṇu, 6. 43; also Nārada, 1. 121.)

NOTES

This applies to cases where the surety has been harassed by the creditor.—(*Smṛtichandrikā*, p. 357.)

The double amount is payable after the lapse of a month and a half (see Bṛhaspati above).—(*Vīramitrodaya*, p. 328.)

This refers to payments made, not only by the surety, but also by his son.—'*Openly*'—publicly, in the presence of all the people;—'*made to pay*'—*i.e.*, not when he has paid it voluntarily, with a view to making a profit (see below). There is no limit of time here; whenever the debtor pays it—even if he pays it immediately—he has to pay double the amount. This rule refers to *dealings in gold*; in the case of dealings with other kinds of property, the surety shall recover (as laid down in Yājña. 2. 57) the amount that has been prescribed as the maximum interest payable, *viz.*, the progeny in the case of the cattle, threefold in the case of grains, fourfold in the case of clothes and eightfold in the case of juices.—(*Yājña.* 2. 39.; *Mitākṣarā.*)

162. उतथ्य] प्रतिभुवा प्रतिदत्तं यदपृष्टे ऋणिके धनम् ।
द्विगुणं न प्रतिभुवे प्रदेयमृणिकेन तत् ॥

162. If the surety has paid the debt without having asked the debtor, then the debtor is not to pay him double the amount.—(Utathya in *Smṛtichandrikā*, p. 358.)

NOTES

This applies to cases where it is possible for the surety to ask the debtor.—(*Smṛtichandrikā*, p. 358.)

163. बृहस्पति] साधुत्वाच्चेन्मन्दधिय ऋणं दद्युरभाषिताः ।
तदन्यदापिताः कस्माल्लभेरंस्ते कथं पुनः ॥

163. Should foolish sureties in good faith pay the debt without being asked to do so,—how could they (*i.e.*, they could not) recover that sum from any one ?—(Bṛhaspati, 11. 45.) [Quoted in *Vivādaratnākara*, p. 46.]

REPAYMENT OF DEBT

GRADUAL PAYMENT OF DEBT

167. ऋग्वेद 8. 47. 17.] यथाकलां यथाशफं यथा ऋणं संनयामसि

167. 'As we collect the utmost debt, even by eighths and sixteenths.'—(Ṛg Veda 8. 47. 17.)

NOTES

This indicates the possibility of paying debts by instalments [See also below—Sections 189 *et. seq.*]

METHOD OF PAYMENT

168. बृहस्पति] याचमानाय दातव्यमप्रकालकृतमृणम्
पूर्णावधौ शान्तलाभम् ॥

168. A loan shall be restored on demand, if no time had been fixed for its restoration ;—or on the expiry of the time, if a time had been fixed ;—or when interest has ceased on becoming equal to the Principal.— (Bṛhaspati 11. 47.)

NOTES

The reading accepted above is '*aprakālam*,' which is the reading adopted by *Vivādaratnākara* (p. 47).—*Smṛtichandrikā*, (p. 377) however reads '*alpakālam*,' which would mean 'a debt contracted for a short time.' The latter says that the times for payment herein specified are only meant to be those when payment must be made ; it is not meant to preclude earlier payment.

If the debtor agrees to pay what has been claimed,—this is the best method of repaying a debt.—In the event of his not agreeing, the dispute can be settled by means of witnesses, who shall be trustworthy, honest, accepted by both parties, and at least three in number ; they may be two, if both parties agree to it ; but never one only.—(*Arthashāstra*, 3. 11.)

169. याज्ञवल्क्य 2. 94.] दत्त्वर्णं पाटयेल्लेख्यं शुद्ध्यै वाऽन्यत्तु कारयेत् ॥

169. Having repaid the debt, the debtor should tear off the bond ; or for the purpose of acquittance, another document should be caused to be executed.—(Yājña. 2. 94a.)

NOTES

'Another document'—*i.e.*, a receipt, as evidencing the full discharge of the debt—should be taken from the creditor. This second alternative is to be adopted if the original bond is not traceable and hence cannot be torn off.—(*Smṛtichandrikā*, p. 377.)

170. विष्णु] लिखितेऽर्थे प्रविष्टे लिखितं पाटयेत् ।

170. When the debt covered by a bond has been discharged, the bond should be torn off.—(Viṣṇu in *Vivādaratnākara*, p. 8.)

171. याज्ञवल्क्य 2. 94.] साक्षिमच्च भवेद्यद्वा तद् दातव्यंससाक्षिकम् ।

171. The debt contracted before witnesses should be discharged before witnesses.—(Yājña. 2. 94b; also Viṣṇu in *Vivādaratnākara*, p. 377.)

NOTES

If the witnesses in whose presence the debt had been contracted are not available, the repayment should be made in the presence of other witnesses.—(*Smṛtichandrikā*, p. 377.)

172. नारद] लेख्यं दद्यादृणे शुद्धे तदभावे प्रतिश्रवः ।

172. On the full discharge of the debt, the creditor shall restore the bond; or, if the bond is not traceable, he shall give an acquittance receipt. –(Nārada.)

NOTES

'*Acquittance receipt.*'—This is the meaning of '*pratishrava*' as given by *Asahāya* and *Mayūkha* (p. 183); according to *Smṛtichandrikā* (p. 377) it means 'a public acknowledgment, before gentlemen, of the discharge.'

173. बृहस्पति 11. 66.] यदि वा नोपरि लिखेत् ऋणिना चोदितोऽपि सन् ।
धनिकस्यैव वर्धेत तथैव ऋणिकस्य तत् ॥

173. Should a man, after recovering his debt, fail to receipt it on the bond, or to give a deed of acquittance, the amount paid shall yield interest to the debtor.—(Bṛhaspati, 11. 66; also Nārada in *Smṛtichandrikā*, p. 382.)

174. याज्ञवल्क्य 2. 44.] दीयमानं न गृह्णाति प्रयुक्तं यः स्वकं धनम् ।
मध्यस्थस्थापितं तत् स्यात् वर्धते न ततः परम् ॥

174. If the creditor does not accept the money advanced by him when it is tendered for payment,—and the amount is deposited with a third party,—the loan shall yield no interest after that.—(Yājña. 2. 44.)

175. याज्ञवल्क्य 2. 93.] लेख्यस्य पृष्ठेऽभिलिखेद् दत्त्वा दत्त्वर्णिको धनम् ।
धनी वोपगतं दद्यात् स्वहस्तपरिचिह्नितम् ॥

175. If the debtor makes payments by instalments, he should enter on the back of the bond the amount paid each time; or the creditor may grant him a receipt signed in his own hand for each payment.—(Yājña. 2. 93.)

NOTES

When the entire amount has been paid off in this manner, the bond should be torn off (see Sec. 2 above).—(*Smṛtichandrikā*, p. 379.)

176. विष्णु] असमग्रदाने लेख्यासन्निधाने चोत्तमर्णः स्वलिखितं दद्यात् ॥

176. If the amount paid is only a part of the debt,—and the bond is not near at hand,—then the creditor shall grant a receipt written in his own hand.—(Viṣṇu 6. 26.) [Quoted in *Vivādaratnākara*, p. 80.]

NOTES

'*The bond is not near at hand*';—according to *Vivādaratnākara* (p. 80), this is added with reference to the payment of the entire debt; as only in that case would the bond be required to be produced for being destroyed.

177. नारद] गृहीत्वोपगतं दद्यादृणिकायोदयं धनी ।

177. On receiving what the debtor is able to pay, the creditor shall grant him a receipt.—(Nārada in *Vivādaratnākara*, p. 80.)

NOTES

It is only in cases where payment by easy instalments has been definitely sanctioned,—*e.g.*, in the case of the impoverished debtor—that interest shall cease on the amount of the instalment paid; in other cases interest shall continue to accrue on the entire principal until the whole debt is paid off.—(*Smṛtichandrikā*, p. 380.)

178. नारद] न दद्याद् याच्यमानस्तु शेषहानिमवाप्नुयात् ॥

178. If, even on being requested, the creditor fail to grant the receipt for the part payment, he shall forfeit the balance of his dues.—(Nārada in *Smṛtichandrikā*, p. 381.)

NOTES

According to the *Smṛtichandrikā* (p. 381), this forfeiture occurs only when the balance is a small one.

179. मनु 8. 154.] ऋणं दातुमशक्तो यः कर्तुमिच्छेत् पुनः क्रियाम् ।
स दत्वा निर्जितां वृद्धिं करणं परिवर्तयेत् ॥

179. If a debtor, unable to repay the debt, wishes to renew the contract, he shall change the bond after paying the accrued interest.—(Manu 8. 154.)

NOTES

Being unable to pay the Principal with the interest accrued, he shall pay the interest and execute another bond for the Principal.—(*Medhātithi.*)

It is not necessary to pay off the entire amount of the interest; some part of it he must pay, and the balance of the interest along with the Principal should be entered in the new bond (see next sec.)—(*Vivādaratnākara*, p. 72.)

180. मनु 8. 155.] अदर्शयित्वा तत्रैव हिरण्यं परिवर्तयेत् ।
यावती संभवेद्वृद्धिस्तावतीं दातुमर्हति ॥

180. Being unable to pay the interest, he should renew the bond, and pay as much of the interest as may be possible.—(Manu 8. 155.)

NOTES

In the new bond, when the Principal along with the accrued interest has been entered as the Principal, the rate of interest stipulated should be very much lower than the former rate.—(*Medhātithi.*)

181. बृहस्पति 11. 60.] पूर्णावधौ शान्तलाभमृणमुद्ग्राहयेद्धनी ।
कारयेद्वा ऋणी लेख्यं चक्रवृद्धिव्यवस्थया ॥

181. When the time fixed for payment has elapsed, and interest has ceased to accrue, on becoming equal to the Principal, the creditor may recover the loan; or the debtor may execute a fresh bond, on the basis of compound interest.—(Bṛhaspati 11. 60.) [Quoted in *Vivādaratnākara*, p. 72.]

NOTES

'On the basis of compound interest'—i.e., the amount entered in the new bond shall be the original Principal along with the amount of interest that has remained unpaid.

182. बृहस्पति 11. 29. 30.] हिरण्ये द्विगुणीभूते मृते नष्टेऽधमर्णिके ।
द्रव्यं तदीयं संगृह्य विक्रीणीत ससाक्षिकम् ॥
रक्षेद्वा कृतमूल्यं च दशाहं जनसंसदि ।
ऋणानुरूपं परतो गृह्णीतान्यत्तु वर्जयेत् ॥

182. When the amount of the debt has been doubled by the interest accruing on it, and the debtor is either absent or dead, the creditor may take his chattel and sell it before witnesses ; or he shall have its value estimated in an assembly ; he may keep the chattel for ten days ; after which, having realised his own dues, he shall leave the balance.—(Bṛhaspati 11. 29-30.) [Quoted in *Vivādaratnākara*, p. 73.] (See above.)

183. भरद्वाज] ऋणिकस्य धनाभावे देयोऽन्योऽर्थस्तु तत्क्रमात् ।
धान्यं हिरण्यं लौहं वा गोमहिष्यादिकं तथा ।
वस्त्रं भूर्दासवर्गं च वाहनादि यथाक्रमम् ॥
धनिकस्य तु विक्रीय प्रदेयमनुपूर्वशः ।
क्षेत्राभावे तथाऽऽरामस्तस्याभावे हयक्रयः ।

183. If the debtor has no money to discharge the debt, he may liquidate it by tendering any one of these things in the following order :—grains, gold, iron, cow, buffalo, clothes, land, slaves, conveyances.—Or he may sell one of the following things and pay the cash-proceeds to the creditor—arable land, or garden, or horses.—(Bhāradvāja in *Parāsharamādhava*, p. 193.)

REALISING DUES FROM THE RECALCITRANT DEBTOR

184. मनु 8. 47.] अधमर्णार्थसिद्ध्यर्थमुत्तमर्णेन चोदितः ।
दापयेद्धनिकस्यार्थमधमर्णाद् विभावितम् ॥

184. On being prayed by the creditor for the recovery of money from the debtor, the King shall make the debtor pay to the creditor the amount proved to be due.—(Manu 8. 47.)

185. मनु 8. 49.] धर्मेण व्यवहारेण छलेनाचरितेन च ।
प्रयुक्तं साधयेदर्थं पञ्चमेन बलेन च ॥

185. The creditor shall have the dues paid by means of—(*a*) good faith, (*b*) tactful transaction, (*c*) trick, (*d*) moral pressure and (*e*) force.—(Manu 8. 49.)

NOTES

(*a*) '*Good faith.*'—realising by easy instalments ;—(*b*)' *tactful transaction*' is to be used when the debtor has no property, *i.e.*, the creditor may make a further advance to him in order to enable the man to carry on some business and thereby acquire some money wherewith to pay off the debt; this is what is meant by '*vyavahāra*' here; it cannot mean 'Judicial Proceedings'; as this has to be had recourse to only after all the other means have failed ;—(*c*) '*trick*,'—borrowing an ornament or some such article from him under some pretext and then retaining it until the debt is paid ;—(*d*) '*moral pressure*,'—fasting and constantly sitting at the man's door ;—(*e*) '*force*'—stands here for applying to the King who shall summon the debtor and compel him to pay up.—The creditor should not have recourse to either 'trick' or 'moral pressure' without notifying the same to the King (see 26 below).—(*Medhātithi.*)

'*Vyavahāra*' is meant for the debtor who denies the liability; the other means are for those who admit the debt.—(*Smṛtichandrikā.*)

186. मनु 8. 51.] अर्थेऽपव्ययमानं तु कारणेन विभावितम् ।
दापयेद्धनिकस्यार्थं दण्डलेशं च शक्तितः ॥

186. The man who denies the debt should be made to pay the creditor's dues as proved by evidence,—as also a small fine according to his means.—(Manu 8. 51.)

187. मनु 8. 52.] अपह्नवेऽधमर्णस्य देहीत्युक्तस्य संसदि ।
अभियोक्ता दिशेद्देशं कारणं वा समुद्दिशेत् ॥

187. On denial by the debtor, when asked to pay the debt,—the complainant shall adduce evidence in support of his claim.—(Manu 8. 52.)

188. मनु 8. 50.] यःस्वयं साधयेदर्थमुत्तमर्णोऽधमर्णिकात् ।
न स राज्ञाभियोक्तव्य : स्वकं संसाधयन्धनम् ॥
मनु 8. 176.] यः साधयन्तं छन्देन वेदयेद्धनिकं नृपे ।
स राज्ञा तच्चतुर्भागं दाप्यस्तस्य च तद्धनम् ॥

188. If the creditor himself tries by the said means to recover his dues from the debtor, he shall not be blamed by the King.—(Manu 8. 50.)—In fact, if a person complains to the King against the creditor trying to recover his dues by him-

self,—he should be made by the King to pay the total amount due by him and also a fourth part of the same as fine.—(Manu 8. 176.)

NOTES

Viṣṇu (6. 19) prescribes a fine equal to the debt,—to be imposed on the complaining debtor.

This is not permissible in doubtful cases [see below (201 and 202).]

Yājñavalkya (2. 40) simply prescribes a "fine": 'If the creditor tries to realise a proved (or admitted) debt, he shall not be blamed by the King; if the debtor, being pressed, approach the King, he should be fined and made to pay the debt.'—The fine also, on realization, is to be paid to the creditor.—(*Mitākṣarā* and *Aparārka*.)

189. नारद] अथ शक्तिविहीनः स्याद्दणी कालविपर्ययात् ।
शक्त्यपेक्षमृणं दाप्यः काले काले यथोदयम् ॥

189. If, on account of bad times, the debtor is unable to pay up, he should be made to pay gradually, as he goes on obtaining the necessary funds.—(Nārada in *Smṛtichandrikā*, p. 389.)

NOTES

Smṛtichandrikā (p. 389) restricts this concession to Brāhmaṇas only, which is in accordance with the following rule.

190. याज्ञवल्क्य 2. 43.] हीनजातिं परिक्षीणमृणार्थं कर्म कारयेत् ।
ब्राह्मणस्तु परिक्षीणः शनैर्दाप्यो यथोदयम् ॥

190. If the debtor of a lower (or equal) caste happen to be too poor to pay, he should be made to make good by labour the amount due from him; but the Brāhmaṇa should be made to pay by easy instalments.—(Yājña. 2. 43.)

NOTES

'*Brāhmaṇa*,'—*i.e.*, the debtor belonging to a higher caste than the creditor. '*Lower caste*'—This includes the equal caste also.—(*Aparārka*). '*Labour*'—work in keeping with his caste, and which can be done by him without detriment to his family.—(*Mitākṣarā*.)

191. मनु 8. 177.] कर्मणाऽपि समं कुर्याद्धनिकायाधमर्णिकः ।
समोऽवकृष्टजातिस्तु दद्याच्छ्रेयांस्तु तच्छनैः ॥

191. Even by labour shall the debtor make good what is due to the creditor,—if he is of the same or of a lower caste; the superior person shall pay it gradually.—(Manu 8. 177.)

NOTES

If the debtor has no property, he should pay with labour; and he shall get credit for the amount of wages that would be payable for the work done by him.—'*Superior person*'—*i.e.*, one belonging to a higher caste.—(*Medhātithi.*)

192. कात्यायन] धनदानासहं बद्ध्वा स्वाधीनं कर्म कारयेत् ।
अशक्तो बन्धनागारे प्रवेश्यो ब्राह्मणादृते ॥

192. If the debtor is unable to pay, the creditor shall catch him and take work out of him; if the man is unable to work, he should be confined in prison; except when he is a Brāhmaṇa.—(Kātyāyana in *Smṛtichandrikā*, p. 390.)

193. बृहस्पति] ऋणिकं निर्धनं कर्म गृहमानीय कारयेत् ।
.... ब्राह्मणस्तु दापनीयः शनैः शनैः ॥

193. If the debtor is too poor to pay, the creditor shall bring him to his house and make him work; but the Brāhmaṇa should be made to pay up by easy instalments.—(Bṛhaspati in *Aparārka*, p. 646.)

194. बृहस्पति] प्रतिपन्न ऋणी दाप्यः सामादिभिरुपक्रमैः ।
धर्मोपधिबलात्कारैर्गृहसंरोधनेन च ॥
सुहृत्सम्बन्धिसन्दिष्टैः सामोक्त्याऽनुगमेन च ।
प्रायेण वा ऋणी दाप्यो धर्म एष उदाहृतः ॥
छद्मना याचितं चार्थमानीय ऋणिकाद्धनी ।
अन्वाहितादि वाहृत्य दाप्यते तत्र सोपधिः ॥
यदा स्वगृहमानीय ताडनाद्यैरुपक्रमैः ।
ऋणिको दाप्यते यत्र बलात्कारः स कीर्तितः ॥
दारपुत्रपशून् बद्ध्वा कृत्वा द्वारोपवेशनम् ।
यत्रर्थी दाप्यतेऽर्थं स्वं तदाचरितमुच्यते ॥

194. When the debtor has acknowledged a debt, it may be recovered from him by friendly expostulation and other expedients, (*a*) by moral suasion, (*b*) by artifice, (*c*) by force or

(*d*) by confinement in the house.—(*a*) When the debtor is made to pay by the advice of friends and kinsmen, by friendly remonstrances, by persistent following, by importunate entreaties, (or according to some, 'fasting upon the door'),—it is *moral suasion*.—(*b*) When the creditor, with crafty design, borrows some article from the debtor for his own use, or withholds an article bailed for delivery, and thus enforces payment of the debt,—it is *artifice*.—(*c*) When the debtor is brought by the creditor to his own house and there, by beating him and by adopting such other means, compels him to pay,—it is *force*.—(*d*) When the creditor confines the debtor's wife, children and cattle in the house and watches at the door, and thus enforces payment of the debt,—it is *Ācharita* (the Customary Mode).—(Bṛhaspati 11. 54—58.) [Quoted in *Vivādaratnākara*, pp. 67-68 ; *Smṛtichandrikā*, pp. 382-383.]

195. कात्यायन] पीडनेनोपरोधेन साधयेद्दणिकं धनी ।
कर्मणा व्यवहारेण सान्त्वेनादौ विभावितः ॥
आददीतार्थमेवं तु व्याजेनाचरितेन च ॥

195. The creditor shall recover his dues from the debtor by means of torture, confinement, work, by judicial proceedings, by artifice or by the 'customary mode,' after he has been approached by friendly expostulation.—(Kātyāyana in *Vivādaratnākara*, p. 48.)

NOTES

'*Work*'—by making him fetch water and so forth.

196. राजानं स्वामिनं विप्रं सान्त्वेनैव प्रसाधयेत् ।
रिक्थिनं सुहृदं वाऽपि छलेनैव प्रसाधयेत् ॥
वणिजः कर्षकांश्चैव शिल्पिनश्चाब्रवीद्भृगुः ।
देशाचारेण दाप्याः स्युः, दुष्टान् सम्पीड्य दापयेत् ॥

196. From the king, the master and the Brāhmaṇa, one's dues should be realised by means of moral suasion ;—from one's heirs and friends, by means of artifice ;—from traders, cultivators and artisans, by means of the Customary Mode ;—and from wicked persons, by means of force.—(Kātyāyana in *Vivādaratnākara*, p. 69 and *Smṛtichandrikā*, p. 384.)

197. बृहस्पति 11. 63.] नासेद्ध्यः क्रियावादी सन्दिग्धेऽर्थे कथञ्चन ।

197. A debtor, claiming judicial investigation in a doubtful case, shall not be put under restraint, by the creditor.—(Bṛhaspati 11. 63.) [Quoted in *Vivādaratnākara*, p. 75.)

NOTES

A case is called 'doubtful' when there is difference of opinion between the parties regarding the nature of the loan (*i.e.*, as to whether it was gold or silver says *Vivādaratnākara*, p. 76), the exact amount and so forth ;—and the debtor is said to be one 'claiming judicial investigation' when he says 'I shall pay whatever is adjudicated to be due from me'—says Bṛhaspati himself (11. 64. 65).

198. याज्ञवल्क्य 2. 41.] गृहीता ऽनुक्रमाद्दाप्यो धनिनामधमर्णिकः ।
दत्त्वा तु ब्राह्मणायैव नृपतेस्तदनन्तरम् ॥

198. Debts are to be repaid in the order in which they have been contracted ; but that due to the Kṣattriya should be paid only after that due to the Brāhmaṇa has been paid off.—(Yājña. 2. 41.)

199. कात्यायन] नानर्णसमवाये तु यद्यत् पूर्वकृतं भवेत् ।
तत्तदेवाग्रतो देयं राज्ञः स्याच्छ्रोत्रियादनु ॥

199. Where several debts have become payable, that which was contracted first should be paid first ; but that due to the *Kṣattriya* should be paid only after the payment of that due to a Vedic scholar. (Kātyāyana in *Smṛtichandrikā*, p. 390.)

NOTES

The Brāhmaṇa's due should be paid first ; then that due to the Kṣattriya, then that to the Vaishya and then to the Shūdra.—(*Smṛtichandrikā*, p. 390.)

200. कात्यायन] एकाहे लिखितं यत्तु तत्र कुर्यादृणं समम् ।
यस्य द्रव्येण यत् पण्यं साधितं यो विभावयेत् ।
तद्द्रव्यमृणिकेनैव दातव्यं तस्य नान्यथा ॥

200. If several debts have been contracted on the same day, the debtor's assets are to be divided equally among the creditors. But if any creditor proves that the debtor has invested in merchandise the money borrowed from him then the proceeds of the sale of that merchandise should go towards the paying off of that particular debt, not otherwise.—(Kātyāyana in *Vivādaratnākara*, p. 79 and *Smṛtichandrikā*, pp. 391-392.)

201. बृहस्पति] अनावेद्य तु राज्ञे यः सन्दिग्धेऽर्थे प्रवर्तते ।
प्रसह्य स विनेयः स्यात् स चाप्यर्थो न सिध्यति ॥

201. In a doubtful case, if the creditor, without notifying to the king, employs force in realizing his dues, his purpose is not served and he becomes liable to punishment.—(Bṛhaspati in *Smṛtichandrikā*, p. 388.)

202. कात्यायन] पीडयेत्तु धनी यत्र ऋणिकं न्यायवादिनम् ।
तस्मादर्थात् स हीयेत तत्समं चाप्नुयाद्दमम् ॥

202. If the creditor harass a debtor who is claiming judicial investigation, he forfeits his dues, and should be made to pay a fine equal in amount to the sum under dispute.—(Kātyāyana in *Smṛtichandrikā*, p. 388.)

NOTES

From this it is clear that when there is *bona fide* dispute about a debt, the creditor's only remedy is to have recourse to legal proceedings (Kane).—(See 188 above.)

203. यम] ऋणिकः सधनो यस्तु दौरात्म्यान्न प्रयच्छति ।
राज्ञा दापयितव्यः स्यात् गृहीत्वा द्विगुणं ततः ॥

203. If the debtor, though possessing wealth, does not pay the debt through sheer wickedness, the king should realise from him as fine double the amount of the sum in dispute and then compel him to pay off the debt due.—(Yama in *Smṛtichandrikā*, p. 388 and *Parāsharamādhava*, p. 292.)

NOTES

This same text is read in *Vīramitrodaya* (p. 359) and in *Vivādaratnākara*, p. 79)as Nārada's, but the last quarter is read differently, meaning that the fine is to be 20 *per cent* (*or twentieth part*, according to *Vīramitrodaya*, 359) of the sum in dispute.

204. विष्णु] उत्तमर्णश्चेद्राजानमियात् तदा भावितोऽधमर्णो राज्ञो धनदश—
भागमंशं दण्डं दद्यात् । प्राप्तार्थश्चोत्तमर्णो विंशतितममंशम् ॥

204. If the creditor approach the king and prove his debt, the debtor shall pay as fine the tenth part of the debt ; and the creditor, on receiving his dues, shall pay to the king, the twentieth part of the sum realised.—(Viṣṇu 6. 20-21.) [Quoted in *Vivādaratnākara*, p. 78.)

NOTES

What is paid by the creditor is in the shape of *court-fee*,—not fine.

205. याज्ञवल्क्य 2. 42.] राज्ञाऽधमर्णिको दाप्यः साधिताद्दशकं शतम्।
पञ्चकं च शतं दाप्यः प्राप्तार्थो ह्युत्तमर्णिकः॥

205. The debtor is to be made by the king to pay as fine 10 *per cent* of the proved debt; and the creditor on realising his dues, shall pay 5 *per cent* (as fee).—(Yājña. 2. 42.)

NOTES

These rules refer to cases where the claim is not disputed.—In regard to disputed cases, Viṣṇu has declared that —'When the whole demand has been contested by the debtor, —if the creditor succeeds in proving even a part of it,—the debtor must pay up the whole.'—(Viṣṇu 6. 22.)

206. मनु 8. 59.] यो यावन्निह्नुवीतार्थं मिथ्या यावति वा वदेत्।
तौ नृपेण ह्यधर्मज्ञौ दाप्यौ तद्द्विगुणं दमम्॥

206. If the debtor falsely denies a debt,—or if the creditor falsely demands it,—both should be made to pay as fine double the sum involved.—(Manu 8. 59.)

NOTES

If the denial or demanding is due to sheer dishonesty, the fine shall be double the amount claimed; but if it is due to poverty or to forgetfulness, the fine shall be only 10 *per cent*.—(*Medhātithi*.)

207. याज्ञवल्क्य 2. 11.] निह्नवे भावितो दद्यात् धनं राज्ञे च तत्समम्।
मिथ्याभियोगी द्विगुणमभियोगाद्धनं वहेत्॥

207. If the debtor denies the debt, and it is proved, he should pay to the king a fine equal to the sum in dispute.—If the claim of the creditor is proved to be false, he should pay a fine double the amount of the claim.—(Yājña. 2. 11.)

NOTES

These two are general rules applicable to all claims.

208. मनु 8. 139.] ऋणे देये प्रतिज्ञाते पञ्चकं शतमर्हति ।
अपह्नवे तु द्विगुणम् ।

208. On the debt being admitted to be due, the debtor shall pay a fine of five per cent; and in the case of denial, twice as much.—(Manu 8. 139.)

NOTES

The debtor having failed to pay the debt, the creditor files a suit against him; the debtor on being summoned, admits the claim and is ready to pay up; in this case the penalty is a small one—a fine of 5 *per cent.* But if he denies it, and the creditor succeeds in proving it, the penalty is double—*i. e., 10 per cent*; not double the amount of the debt, as some people have explained.—(*Medhātithi.*)

209. कात्यायन] यदि ह्यादाव नादिष्टमशुभं कर्म कारयेत् ।
प्राप्नुयात् साहसं पूर्वमृणान्मुच्येत चर्णिकः ॥

209. In seeking to recover his debt, if the creditor takes such improper work out of the debtor as has not been stipulated,—he forfeits his dues and becomes liable to the first amercement.—(Kātyāyana in *Vivādaratnākara*, p. 71.)

NOTES

The *Arthashāstra* has the following rules on this subject:

(*a*) If a debtor owes money to several creditors, he shall not be sued by more than one at a time,—except when he may be on the point of leaving the country. He shall pay the several debts in the order in which they may have been incurred; or the debts to the king and to the Vedic scholar shall be discharged first of all.

(*b*) Loan-transactions between husband and wife, or father and son, or among brothers not separated, shall not be cognizable in Courts of Law.

(*c*) Cultivators and royal officers shall not be arrested for debt while they are engaged in their work.—Nor will a woman be arrested if she refuses to pay the debt incurred by her husband; except in the case of the wives of cowherds and the like. The husband shall be arrested for the debt incurred by his wife, if it has been incurred by her on account of his having gone abroad without having made provision for the family.—(*Arthashāstra*, 3. 11)

WHO IS TO PAY THE DEBT ON DEBTOR'S DEATH ?

210. नारद 13. 32.] यच्छिष्टं पितृदायेभ्यो दत्त्वर्णं पैतृकं ततः ।
भ्रातृभिस्तद् विभक्तव्यं ऋणी न स्यात् पिता यथा ।

210. What is left after the discharge of the father's obligations and after the payment of the father's debts, shall be divided by the brothers; so that the father may not remain a debtor.—(Nārada 13. 32.)

(For notes see Vol. II, under Chapter on 'What can be Partitioned?')

211. कात्यायन] ऋणं प्रीतिप्रदानं तु दत्त्वा शेषं विभाजयेत् ।

211. The sons shall pay off the debts and the gifts promised by the father and divide the remainder among themselves.—(Kātyāyana.)

(For notes see Vol. II, Chap. I.)

212. कात्यायन] भ्रात्रा पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम् ।
विभागकाले देयं तत् ऋक्थिभिःसर्वमेव तु ।
तदृणं धनिने देयं नान्यथैव प्रदापयेत् ।
भावितं चेत् प्रमाणेन विरोधात् परतो यदा ॥

212. Whatever debt may have been incurred for purposes of the family, by the brother, the paternal uncle or the mother, should all be paid by the co-parceners at the time of partition. The debt shall be repaid to the creditor. If the debt is denied by the other party, and the creditor proves it by adequate evidence, then the debtor-party should be compelled to repay it.—(Kātyāyana.)

(For notes see Vol. II, Chap. I.)

213. कात्यायन] पित्र्यं पितृणसम्बद्धमात्मीयं चात्मना कृतम् ।
ऋणमेवंविधं शोध्यं विभागे बन्धुभिःसह ॥

213. That incurred by the father,—that incurred by oneself in connection with the father's debts,—that incurred by oneself,—all these debts should be cleared when there is partition among relatives.'—(Kātyāyana.)

(For notes see Vol. II, Chap. I.)

214. कात्यायन] धर्मार्थं प्रीतिदत्तं च यहणं स्वनियोजितम् ।
तद् दृश्यमानं विभजेत्, न दानं पैतृकाद्धनात् ॥

214. The debt that has been incurred (by a brother) for religious purposes, or for making a loving gift, or for his own benefit,—all this shall be set aside as to be paid wholly by the man who incurred it, and not out of the joint stock; because there can be no gift (by any one co-parcener on his own behalf) out of the ancestral property.—(Kātyāyana.)

(*For notes see Vol. II, Chap. I.*)

215. नारद] अतः पुत्रेण.........ऋणात् पिता मोचनीयः ।

215. The son should try his best to absolve his father from debt.—(Nārada in *Vivādaratnākara*, p. 54.)

NOTES

This applies to the son who has attained majority.—(*Mitākṣarā.*)

216. बृहस्पति] अभावे च पितुः सुतैः [ऋणं दातव्यम्] ।

216. In the absence of the debtor, his sons should pay the debt.—(Bṛhaspati 11. 47.)

NOTES

'*Absence*'—death;—'*sons*'—those who inherit the father's property.—(*Smṛtichandrikā*, p. 392.)

217. याज्ञवल्क्य 2. 50.] पितरि प्रोषिते प्रेते व्यसनाभिप्लुतेऽपि वा ।
पुत्रपौत्रैर्ऋणं देयं निह्नवे साक्षिभावितम् ॥

217. If the father is dead, or gone abroad, or smitten with trouble, his debt should be paid by his sons and grandsons; if, on denial, it is proved by witnesses.—(Yājña. 2. 50.)

NOTES

'*Smitten with trouble*'—such as drunkenness and the like;—if the sons and grandsons dispute the validity of the debt, it has to be paid after it has been established by evidence to be adduced.—The implication of this rule is that the

liability of the sons and grandsons does not cease, even when the father has left no property. —(*Aparārka.*)

The sons and grandsons have to pay even though they may not have inherited any property from the father. The order of the liability is that in the absence of the father, the son has to pay, and in the absence of the son, the grandson has to pay.—(*Mitākṣarā.*)

(*a*) If the debtor has died, his sons shall pay the interest, or his heirs who have inherited his property,—or those conjointly with whom the debt had been contracted,—or those who had stood surety; (*b*) sons or grandsons or other heirs inheriting the dead man's property shall pay all his debts, whenever and wherever contracted.—Surety-money due from the dead person,—whenever and wherever accrued on account of his standing surety for life or marriage, or land,—shall be paid by his sons or grandsons.—(*Arthashāstra*, 3. 11.)

218. नारद] नार्वाक् संवत्सराद्विंशात् पितरि प्रोषिते सुतः ।
ऋणं दद्यात् पितृव्ये वा ज्येष्ठे भ्रातर्यथापि वा ॥

218. The father or uncle (or elder brother), having gone abroad, the son (or nephew, or younger brother) is not bound to pay the debt (of the father or uncle or elder brother), before the lapse of twenty years.—(Nārada in *Vivādaratnākara*, p. 50.)

219. कात्यायन] विद्यमानेऽपि रोगार्त्ते स्वदेशात् प्रोषिते तथा ।
विंशात्संवत्सराद् देयमृणं पितृकृतं सुतैः ॥

219. Even when the father is alive,—if he is stricken by disease, or has gone away from the country,—his sons shall pay his debt after twenty years.—(Kātyāyana in *Smṛtichandrikā*, p. 394.)

NOTES

If, etc.—What is meant is that the father is absolutely unable to repay the debt.—The payment is to be made '*after twenty years*' in the case of the father having gone abroad; in other cases, it is to be made after the exact nature and amount of the debt have been settled.—(*Smṛtichandrikā*, p. 394.)

The interval of twenty years is meant to apply to cases where the father is expected to recover from the disease, or to come back from abroad; in cases where the disease has been pronounced to be incurable, or where there is no chance of the father coming back, the son should pay the father's debt at once, without waiting for twenty years. This is what is clearly laid down in the following rule.—(*Vivādaratnākara*, pp. 50-51.)

'*Gone away from the country.*' This includes *death* also—says *Mayūkha* (p. 185).

According to *Mayūkha* (p. 185), the meaning is not 'after the lapse of 20 years,' but 'after the son is 20 years of age.' In either case, the 20 years are to be reckoned from the day of going abroad.—(*Vīramitrodaya*, p. 342.)

220. कात्यायन] व्याधितोन्मत्तवृद्धानां तथा दीर्घप्रवासिनाम् ।
ऋणमेवंविधं पुत्रान् जीवतामपि दापयेत् ॥

220. If the father is stricken by disease, or insane, or too old, or has been away from the country for a long time,—the sons should be made to repay his debt.—(Kātyāyana in *Vivādaratnākara*, p. 51 and *Aparārka*, p. 651.)

221. कात्यायन—बृहस्पति] सान्निध्येऽपि पितुः पुत्रैर्ऋणं देयं विभावितम् ।
जात्यन्धपतितोन्मत्तक्षयश्वित्रादिरोगिणः ॥

221. Even when the father is at home,—if he happen to be blind from birth, or an outcast or insane, or suffering from consumption, leucoderma and such other foul diseases,—his debt, when proved, should be paid by his son. —(Kātyāyana in *Aparārka*, p. 650 ; but Bṛhaspati in *Smṛtichandrikā*, p. 394.)

NOTES

The meaning of this rule is as follows :—

(*a*) If the father happen to be under some such disqualification as render him unable to possess property,—and if the son has not separated from him,—then the son shall pay his debts ;—(*b*) but if the father, even though suffering from the disqualifications, still happens to possess personal property of his son,—then the debt shall be paid by the father himself; —(*c*) if the father is absolutely unable to pay the debt,—while the son is able to pay it,—the debt shall be paid by the son.— (*Vivādaratnākara*, p. 51.)

222. नारद 4. 2.] पितर्युपरते पुत्रा ऋणं दद्युर्यथांशतः ।
विभक्ता वाऽविभक्ता वा ये वा तामुद्वहेद्धुरम् ॥

222. On the death of the father, the sons—divided or undivided—shall pay his debt in proportion to their shares; or it may be paid by that son who bears the burden (of managing the property).—(Nārada 4. 2.)

NOTES

(*a*) If the sons are 'undivided' and are living together on equal terms, the payment shall be made by them collectively ;—(*b*) if they are living together under the arrangement that one of them is the 'head' of the family, then the payment shall be made by this latter ;—(*c*) if they are 'divided,' the debt shall be paid by them in proportion to their shares in the property.—(*Smṛtichandrikā*. p. 375 and *Vīramitrodaya*, p. 341.)

223. कात्यायन] पित्र्यर्णे विद्यमाने तु न च पुत्रो धनं हरेत् ।
देयं तत् धनिने द्रव्यं मृते गृह्णंस्तु दाप्यते ॥

223. On the father's death, so long as his debt remains unpaid, the sons shall not receive his property; the son who inherits his property on his death shall pay the debt.—(Kātyāyana in *Smṛtichandrikā*, p. 395.)

NOTES

The meaning of this rule is that if one had sons, some of whom were divided and some undivided from him,—then any debts that may have been incurred by him after separation from the former, shall not be payable by the divided sons, who do not also inherit his property.—(*Smṛtichandrikā*, p. 395.)

The son separated from his father shall not, on his death, take the father's property until the debts contracted by the latter after separation have been paid out of that property; and he should take only what remains after the discharge of the debt. In case the father has left no property to be inherited, the son shall pay the debt out of his own property.—The 'son' here is meant to include the grandson also.—(*Vīramitrodaya*, p. 344.)

224. बृहस्पति 11. 48.] ऋणं पितृकृतं देयं पश्चादात्मीयमेव च ।

224. The son shall pay off his father's debts before paying his own debts.—(Bṛhaspati 11. 48.)

225. कात्यायन] नाप्राप्तव्यवहारैस्तु पितर्युपरते क्वचित् ।
काले तु विधिना देयम् ॥

225. If the son is a minor, he shall not pay the dead father's debt during his minority; he shall pay it as soon as he has attained his majority.—(Kātyāyana in *Smṛtichandrikā*, p. 393, and *Vīramitrodaya*, p. 341; but Nārada in *Vivādaratnākara*, p. 54.)

NOTES

'Majority' and 'Minority' have been thus defined by Nārada: 'Till the eighth year of his age, the child is to be regarded as still *in the womb*; after the eighth and till the sixteenth year, he is a *boy*, a *minor*; after that he is a *major*, his own master, except for the control of his parents.'—(*Mitākṣarā*, 2. 50.)

226. कात्यायन] ऋणं तु दापयेत् पुत्रं यदि स्यान्निरुपद्रवः ।
द्रविणार्हश्च धुर्यश्च, नान्यथा दापयेत्सुतम् ॥

226. The son shall be made to pay the father's debts, if he is free from difficulties, entitled to inherit the father's pro-

perty, and fit for bearing his father's burdens; not otherwise.—(Kātyāyana in *Smṛtichandrikā*, p. 394.)

NOTES

'*Entitled to inherit*'—This implies that even if he does not actually inherit the property, he shall pay the debt,—so long as he does not suffer from any such disqualifications as suffering from an incurable disease and so forth, which would exclude him from inheritance also.—(*Smṛtichandrikā*, p. 394.)

227. मनु 8. 159.] प्रातिभाव्यं वृथादानमाक्षिकं सौरिकं च यत् ।
दण्डशुल्कावशेषं च न पुत्रो दातुमर्हति ॥

227. The son shall not be liable to pay the father's debt, on account of surety-money, or a futile gift, or gambling debts, or debts due to liquor, or the balance of fines and taxes.—(Manu 8. 159; also Vasiṣṭha 16. 31.)

NOTES

This rule refers to cases of surety-ship other than that for 'payment.' '*Futile gift*'—gift promised in joke (*Medhātithi*); it has been defined in 'a *Smṛti*' quoted in *Smṛtichandrikā*, p. 396 'as gift promised to buffoons, bards, wrestlers, quacks, thieves, and the like.'

Neither the son nor any heir shall be compelled, against his will, to pay the balance of fines and taxes, or gambling debts, or debts due to liquor, or debts due to lust.—(*Arthashāstra*, 3. 16.)

228. मनु 8. 160.] दानप्रतिभुवि प्रेते दायादानपि दापयेत् ॥

228. The heirs should pay the surety-money if the father had stood surety for payment.—(Manu 8. 160.)

229. गौतम 12. 41.] प्रतिभाव्यवणिक्शुल्कमद्यद्यूतदण्डा न
पुत्रानध्याभवेयुः ।

229. The sons shall not be made to pay surety-money, trade-duties, debts due to gambling or drinking or fines.—(Gautama 12. 41.) [Quoted in *Vivādaratnākara*, p. 58.]

230. बृहस्पति] सौराक्षिकं वृथादानं कामक्रोधप्रतिश्रुतम् ।
प्रातिभाव्यं दण्डशुल्कशेषं पुत्रान्न दापयेत् ॥

230. Debts due to liquor gambling, futile gifts, gifts promised in love or anger, surety-money, balance of fines and taxes,—these debts of the father the son shall not be

made to pay.—(Bṛhaspati 11. 51; also Yājña. 2. 47, where however 'anger' has been omitted.)

NOTES

'*Gifts promised in love*'—*i.e.*, in adulterous love-making. '*Gifts promised in anger*' in a fit of anger a man damages the property of another person, and then in order to placate him, promises a present; this is what is meant.—(*Aparārka*, p. 649.)

'*Shulka*' has been explained by Haradatta on Gautama as 'bride-price.' *Bālambhaṭṭī* explains it as 'taxes.'

The mention of '*balance*' of fines and taxes should not be taken to imply that if the *entire* fine or *entire* tax is due, the son shall pay it; as this also is precluded by the following rule.—(*Mitākṣarā*, on 247.)

231. व्यास] दण्डो वा दण्डशेषो वा शुल्कं तच्छेष एव वा ।
न दातव्यं तु पुत्रेण यच्च न व्यावहारिकम् ॥

231. Fine or balance of fine, tax or balance of tax, or what is not proper,—such debts of the father, the son shall not pay.—(Vyāsa in *Vivādaratnākara*, p. 58, but Ushanas in *Aparārka*, p. 648 and in *Mitakṣarā*, p. 47.)

NOTES

'*What is not proper*'—This is the meaning of '*na vyāvahārikam*,' as explained by *Aparārka*; *Smṛtichandrikā* and *Vīramitrodaya* explain it as 'due to wine'; *Bālambhaṭṭī* as 'what was not used for the family'; *Vivādachintāmaṇi* as 'what is not admissible under normal conditions,' or 'what is not admissible in law.' Kane remarks that the Bombay High Court (I.L.R., 32, Bombay, 348) has accepted the meaning to be 'a debt which no decent or responsible man would incur'; Allahabad (33 All., 472), Madras (37 Mad., 48) and Calcutta (39 Cal., 862) have dissented from the above; Calcutta explaining it as 'what is not lawful, usual or customary, or which is for a cause repugnant to good morals.'

LIABILITY OF THE GRANDSON

232. कात्यायन] पित्रा दृष्टमृणं यत्तु क्रमायातं पितामहात् ।
निर्दोषं नोद्धृतं पुत्रैः देयं पौत्रैस्तु तद्भृगुः ॥

232. If a debt that had been contracted by the grandfather, and was known to the father as valid and as not discharged by the sons of the original debtor, it should be paid without interest by the grandsons.—(Kātyāyana in *Smṛtichandrikā*, p. 397; and *Aparārka*, p. 651.)

NOTES

'*Not discharged by the sons*'—by reason of their being stricken with incurable diseases--says another text of Kātyāyana in *Smṛtichandrikā*.

233. कात्यायन] यद्दृष्टं दत्तशेषं वा देयं पैतामहं तु तत् ।
सदोषं व्याहृतं पित्रा नैव देयमृणं क्वचित् ॥

233. The debt that is known to one's father, or of which a part has been paid by one's father, such debt of the grandfather one should pay. But if the grandfather's debt is invalid, or has been repudiated by the father (his son),—it shall not be paid by the grandson.—(Kātyāyana in *Aparārka*, p. 651; *Smṛtichandrikā*, p. 398.)

234. याज्ञवल्क्य 2. 50.] पुत्रपौत्रैर्ऋणं देयं निह्नवे साक्षिभावितम् ।

234. If, on repudiation, it has been proved by witnesses and other proofs, the debt shall be paid by the sons and grandsons.—(Yājña. 2. 50.)

NOTES

See Section 217 *above.*

235. स्मृतिचन्द्रिका p. 398.] पौत्रैरपि प्राप्तव्यवहारैरेव देयम् ।।

235. The grandsons shall pay the grandfather's debts only after attaining their majority.—(*Smṛtichandrikā*, p. 398.)

236. विष्णु 6. 27-28.] धनग्राहिणि प्रेते प्रव्रजिते द्विदशाब्दसमाः प्रोषिते
वा तत्पुत्रपौत्रैर्धनं देयं नातः परमनीप्सुभिः ॥

236. If he who contracted the debt should die, or become a renunciate, or remain abroad for twenty years,—that debt shall be discharged by his sons and grandsons; but not by remoter descendants, against their will.—(Viṣṇu 6. 27-28.) [Quoted in *Smṛtichandrikā*, pp. 398-399.)

237. नारद] तच्चतुर्थान्निवर्तते ।

237. The liability for a debt ceases from the fourth generation.—(Nārada and Kātyāyana in *Vivādaratnākara*, p. 49.)

NOTES

But the liability does descend to the fourth generation also, if the great-grandson inherits the great-grandfather's property.—(*Smṛtichandrikā*, p. 399 ; also *Mitākṣarā* on 2. 50.)

238. बृहस्पति 11-48.] पित्र्यमादावृणं देयं पश्चादात्मीयमेव च ।
तयोः पैतामहं पूर्वं देयमेवमृणं सदा ॥

238. When one has to pay one's own debt, one's father's debt and one's grandfather's debt,—one should pay the grand-father's debt first, then the father's, then his own.—(Bṛhaspati, 11. 48.) [Quoted in *Parāsharamādhava*, p. 197.]

239. बृहस्पति] ऋणमात्मीयवत् पित्र्यं पुत्रैर्देयं विभावितम् ।
पैतामहं समं देयं न देयं तत्सुतस्य तु ॥

239. One should discharge one's father's proved debt as his own (*i.e.*, with interest) ; of the grandfather's debt, one should pay the principal only ; the grandson's son shall not be liable for the great-grandfather's debts.—(Bṛhaspati in *Vivādaratnākara*, p. 49.)

240. याज्ञवल्क्य 2. 90.] ऋणं लेख्यकृतन्देयम्पुरुषैस्त्रिभिरेव तु ॥

240. A debt covered by a bond should be paid up to the third generation.—(Yājña. 2. 90.)

NOTES

The statement that the liability to pay a debt ceases after the grandson refers to cases where the debt is *not covered by a Mortgage*.—(*Vivādaratnākara*, p. 49.)

LIABILITY OF HEIRS IN GENERAL

241. विष्णु 6. 29-30.] सपुत्रस्यापुत्रस्य च रिक्थग्राही धनं दद्यात् ।
अधनस्य स्त्रीग्राही ।

241. Whether a man has or not a son, he who takes his assets must pay his debts ;—of one who leaves no assets, the debt must be paid by one who keeps his wife.—(Viṣṇu 6. 29-30.)

NOTES

'*Who leaves no assets*'—This is the meaning of the term '*adhana*' according to *Vivādaratnākara* (p. 6); according to *Smṛtichandrikā* (p. 401) it means 'who leaves no heirs to his property.'

242. नारद] अधनस्य ह्यपुत्रस्य मृतस्योपैति यः स्त्रियम् ।
ऋणं वोढुः स भजते तदेवास्य धनं स्मृतम् ॥

242. If a man dies having no son and leaving no assets, the man who takes his wife pays his debt; the wife being the dead man's sole property.—(Nārada in *Vivādaratnākara*, p. 62.)

NOTES

This refers to the case of wine-distillers and others of that class, as expressly stated in the following rule.

243. कात्यायन] निर्धनैरनपत्यैस्तु यत्कृतं शौण्डिकादिभिः ।
यः स्त्रीणामुपभोक्ता तु दद्यात्तदृणमेव हि ॥

243. The debt contracted by wine-distillers and others having no assets and no children shall be paid by one who enjoys their wives.—(Kātyāyana in *Vivādaratnākara*, p. 62.)

244. बृहस्पति] ऋणभाग् द्रव्यहारी च यदि सोपद्रवः सुतः ।
स्त्रीहारी तु तथैव स्यादभावे धनहारिणः ॥

244. If the son is beset with disqualifications, the man who takes the assets of the dead man pays his debts; if there is no one taking the assets, the man who takes his wife pays the debt.—(Bṛhaspati in *Vivādaratnākara*, p. 64.)

NOTES

'*Disqualifications*'—those that make him unfit to inherit property.

245. नारद] धनस्त्रीहारिपुत्राणामृणभाग् यो धनं हरेत् ।
पुत्रोऽसतोः स्त्रीधनिनोः, स्त्रीहारी धनिपुत्रयोः ॥

245. Among (*a*) the person taking the assets, (*b*) the person taking the wife, and (*c*) the sons (beset with disqualification),—it is the person taking the assets that should pay the dead man's debts;—if there is no one taking his

assets, nor one taking his wife, then the son shall pay his debts;—if there is no one taking his assets, nor a son, then the person taking his wife shall pay his debts.—(Nārada in *Vivādaratnākara*, p. 63.)

NOTES

The 'son' meant here is one who is free from disqualifications—says *Vivādaratnākara* (p. 63).

'*If there is no one taking his assets*'—because the debtor has left 'no assets'—'*nor one taking his wife*' because he has left no wife,—then the debt is to be paid by the son who is without property and without parents.—(*Asahāya*).—According to *Aparārka*, (*a*) the son and other inheritors of the debtor's property shall pay the debt; (*b*) in the absence of those, the man who keeps his wife; (*c*) in his absence, the son excluded from inheritance.

In order to reconcile all this with Yājñavalkya 2. 51 (see below Sec. 249), the words of the present text must be taken as referring to a case where there is no son richer than the paramour of the widow. If a poor man dies indebted, leaving a son and a wife who takes shelter with another man, then (says Asahāya) if she is handsome and highly honoured by her paramour, the latter should pay her deceased husband's debt; and if she is kept merely as a maid-servant and given bare maintenance, then the son must pay the debts.—(Kane in *Mayūkha*, notes, pp. 346-347.)

246. कात्यायन] पूर्वं दद्याद्धनग्राहः पुत्रस्तस्मादनन्तरम् ।
योषिद्ग्राहः सुताभावे पुत्रो वाऽत्यन्तनिर्धनः ।

246. First of all, the debt should be paid by the person who takes the debtor's assets; after him, by the son; if there is no son, then by the man who takes the debtor's wife,—or the absolutely impoverished son.—(Kātyāyana in *Smṛtichandrikā*, p. 403.)

NOTES

There is some apparent conflict between this and Yājña. 2. 51; it has been explained by taking the present text to apply where, as compared with the 'man taking the wife,' the son disqualified from taking the estate possesses a large fortune.—(Kane.)

247. कात्यायन] व्यसनाभिप्लुते पुत्रे बालो वा यत्र दृश्यते ।
द्रव्यहृद्दापयेत्तत्र तस्याभावे पुरन्ध्रिहृत् ॥

247. If the son happen to be beset with difficulties, or to be a minor, the man who takes the dead man's assets should pay his debts; in the absence of such a man, the man who takes his widow.—(Kātyāyana in *Vivādaratnākara*, p. 64; and in *Smṛtichandrikā*, p. 402.)

248. नारद] या पुनः सधनैव स्त्री सापत्या वाऽन्यमाश्रयेत् ।
सोऽस्या दद्यादृणं भर्तुरुत्सृजेद्वा तथैव ताम् ॥

248. If a widow, having property and children, should take shelter with another man, this man shall pay her husband's debts ; or else, he should give her up.—(Nārada, in *Aparārka*, *Mitākṣarā*, *Vivādaratnākara*, *Vīramitrodaya*, and *Smṛtichandrikā*, p. 405.)

NOTES

According to all except *Smṛtichandrikā*, this rule refers to a man who keeps the widow as his wife. But the *Smṛtichandrikā* explains the meaning to be as follows :—If the widow possessing property and having children should seek shelter with her maternal uncle or such other relation, then such relative should make her pay her husband's debts ; if she refuse to pay it, then he should send her away from his house.

249. याज्ञवल्क्य 2. 51.] रिक्थग्राह ऋणं दाप्यो योषिद्ग्राहस्तथैव च ।
पुत्रोऽनन्याश्रितद्रव्यः पुत्रहीनस्य रिक्थिनः ॥

249.—(A) One who inherits the dead man's property should pay his debts ;—(B) [in the absence of such a person] the man who has taken his wife should pay his debts ;—(C) [among sons] that son is to pay the father's debts whose property does not rest with another person ;—(D) if the man has died leaving no son (or grandson according to Mitākṣarā), his debts shall be paid by those who inherit his property.—(Yājña. 2. 51.)

NOTES

The rendering of the rule given above is in accordance with the explanation of *Aparārka* (pp. 651-652), which is as follows : There are three distinct rules laid down here :—(1) 'The man who inherits the property should pay the debts,—'inheritors' being (*i*) the son, (*ii*) the secondary son, (*iii*) the wife, (*iv*) the daughter and so forth; but the liability of the primary son having been already asserted in 2. 50, the 'inheritor' here intended is the *secondary son* and the rest ;—'if there is no person who has inherited the dead man's property, then the man who has taken his widow should pay her husband's debts.' (2) The liability of *sons* having been asserted under 2. 50 in a general way, the third rule here laid down makes a distinction between two sets of sons : there is the son in the normal condition who naturally inherits the father's property ; then in certain cases, there is also a son who, by reason of congenital idiocy, blindness or such other defects, has been excluded from inheritance, and therefore has no property of his own ; the meaning of this rule thus is that 'among sons the

liability lies with that son who has property of his own and whose inheritance does not (like the inheritance of the disqualified son) rest with his brothers.—(3) The liability of grandsons to pay the grandfather's debts having been asserted (in 2. 50), people might be led to think that the grandson is to pay even when the grandfather's sons are there; in order to remove this idea, the next, fourth rule is laid down that 'it is only when there is no son that the other inheritors of property are liable to pay the debt.'

Of (3), *Aparārka* (p. 653) supplies another explanation, by which the meaning is that 'that son who (being among those secondary sons who are not entitled to inheritance) has not inherited the father's property shall pay the debt'—but this only if no 'inheritor of property' or 'taker of wife' is there.

According to *Mitākṣarā* also, the meaning is that (1) the inheritor of property should pay, (2) if there is no inheritor, then the man who has taken the wife should pay, (3) if there is no such man, then the son 'whose paternal property does not go to another,'—*i.e.*, one who, *if there were any paternal property*, would not be debarred from inheriting it by reason of congenital defects. According to this, all these three form part of one rule, laying down the order of the liability.—The last rule—'if the *man has died leaving no son*, etc., etc.,'—means that if the man has left no son or grandson, the great-grandson and the rest shall be liable to pay his debts only if they have inherited his property, not otherwise; [the case of the great-grandson and the rest thus differing from that of the son and the grandson who are liable even though they may have inherited nothing from the dead father or grandfather].

Vishvarūpa takes the third sentence regarding the 'son' to refer to the case where from among several sons, one is permitted by the others to take all the property that the father has left; and in this case the debt has to be paid by that one son and not by the others.

Vivādaratnākara (p. 63), agreeing with *Mitākṣarā*, takes the third sentence to apply to cases where the dead man has left no property, in which case the debt falls upon such of his sons *as would have inherited his property*, and not those who would not be so entitled; the reason that is given for restricting this rule to such cases is that the case of the man who has left some property is already covered by the first rule that the debt is to be paid by the person who inherits his property.

'*The man who has taken the wife.*'—The 'widow' whose 'taking'—*i.e.*, receiving as wife—is referred to here is either (*a*) the virgin widow, or (*b*) the widow who, in dire distress, offers herself to a man,—as has been declared by Nārada—(*Mitākṣarā.*)

250. नारद] पुत्रिणी तु समुत्सृज्य पुत्रं स्त्र्यन्यं समाश्रिता ।
तस्या ऋणं हरेत्सर्वं निःस्वायाः पुत्र एव च ॥

250. If a widow, having a son, forsakes the son and betakes herself to another man,—the son shall take off her debts, if she has no property of her own.—(Nārada 4. 20.)

NOTES

According to *Vivādaratnākara* (p. 65) the rule means that the 'son shall pay her husband's debts if she is penniless.'—According to *Mayūkha*, it applies to a son who has taken the estate of the deceased husband and the woman herself has no property. The meaning appears to be that 'if the son inherits his father's wealth, he should also pay off his mother's debts, if she is poor,—although she may have forsaken him.'—(Kane.)

Asahāya reads this text differently, by which the text has nothing to do with the subject of *debt*; the meaning being that 'under the circumstances mentioned, if the woman has any *Strīdhana* of her own, that property shall be taken by the man with whom she has been living;—but if she holds her dead husband's property and has no *Strīdhana*, then the property shall be taken by her son

251. कात्यायन] दीर्घप्रवासिनिर्बन्धुजडोन्मत्तादिलिंगिनाम् ।
जीवतामपि दातव्यं तत्स्त्रीद्रव्यसमाश्रितैः ॥

251. Debts incurred by persons who have long been away, or are devoid of all relations, or idiots or insane,—shall be paid, even though they themselves be alive—by those who have taken their wife or their assets.—(Kātyāyana in *Vivādaratnākara*, p. 66.)

LIABILITY OF FAMILY-MEMBERS

252. याज्ञवल्क्य 2. 45.] अविभक्तैः कुटुम्बार्थे यदृणं तु कृतं भवेत् ।
दद्यु स्तद्रिक्थिनः प्रेते प्रोषिते वा कुटुम्बिनि ॥

252. When debts have been contracted by members of a joint family, for the purposes of the family, they should be paid by the head of the family; and upon his death, or on his going abroad, by those who inherit his property.—(Yājña. 2. 45.)

253. विष्णु 6. 34.] अविभक्तैः कृतमृणं यस्तिष्ठेत् स दद्यात् ॥

253. If a debt has been contracted by a number of undivided co-parceners, it should be paid by any one of them who may be present.—(Viṣṇu 6.34.) [Quoted in *Smṛtichandrikā*, p. 410.]

254. नारद] पितृव्येणाविभक्तेन भ्रात्रा वा यदृणं कृतम् ।
मात्रा वा यत् कुटुम्बार्थे दद्यु स्तत् सर्वरिक्थिनः ॥

254. If a debt has been contracted for the purpose of the family, by an unseparated uncle or by an unseparated brother,

or by the mother,—it shall be paid by all those who inherit the property (on the death, or on the going abroad, of the man who contracted the debt).—(Nārada in *Smṛtichandrikā*, p. 410.)

255. विष्णु 6. 36.] विभक्ताश्च दायानुरूपमंशं (ऋणस्य दद्युः)

255. After separation the family-members shall pay the family-debt in proportion to their shares in the inheritance.—(Viṣṇu 6. 36.) [Quoted in *Smṛtichandrikā*, p. 411.]

256. मनु 8. 166.] ग्रहीता यदि नष्टः स्यात् कुटुम्बे च कृतो व्ययः ।
दातव्यं बान्धवैस्तत् स्यात् प्रविभक्तैरपि स्वतः ॥

256. When the borrower is lost, and the expenditure was incurred for the family, the debt is to be paid by the relatives out of their own property, even though these may have been separated.—(Manu 8. 166.)

NOTES

'*Lost*'—dead or gone abroad.—'*Relatives*'—brother, nephew, uncle and so forth.—'*Even though*, etc.'—which means that this should be done all the more in the case of such relatives as have *not separated*.—(*Medhātithi*.)

Even when the relatives have been separated,—if the debt has been incurred by one of them for the benefit of a relative who is entitled to maintenance from all his relatives,—if the contractor of the debt happens to die,—that debt shall be discharged by all those relatives.—(*Vivādaratnākara*, p. 53.)

LIABILITY OF THE HOUSEHOLDER TO PAY DEBTS CONTRACTED BY FAMILY-MEMBERS

257. बृहस्पति 11. 50.] पितृव्यभ्रातृपुत्रस्त्रीदासशिष्यानुजीविभिः ।
यद् गृहीतं कुटुम्बार्थे तद् गृही दातुमर्हति ॥

257. When a debt has been incurred for the benefit of the family, by an uncle, brother, son, wife, slave, pupil or dependent,—it should be paid by the head of the family.—(Bṛhaspati 11. 50; also Nārada, in *Smṛtichandrikā*, p. 406.)

258. कात्यायन] प्रोषितस्यामतेनापि कुटुम्बार्थमृणं कृतम् ।
दासस्त्रीमातृशिष्यैर्वा दद्यात्पुत्रेण वा भृगुः ॥

258. If during his absence abroad, debt has been incurred—even without his permission—for the benefit of the family,

by slave, wife, mother, pupil or son,—that debt shall be paid by the head of the family.—(Kātyāyana in *Smṛtichandrikā*, p. 407.)

259. कात्यायन] देयं भार्याकृतमृणं भर्त्रा, पुत्रेण मातृकम् ।
भक्तस्यार्थे कृतं यत् स्यात् अविधाय गते दिशम् ॥

259. The debt contracted by the wife should be paid by the husband; that contracted by the mother should be paid by the son,—if it has been contracted by her for the maintenance of the family, on the householder having gone abroad without providing for them.—(Kātyāyana in *Smṛtichandrikā*, p. 407; and in *Vivādaratnākara*, p. 59.)

260. विष्णु 6. 38-39.] प्राक्प्रतिपन्नं देयं यस्य कस्यचित्—कुटुम्बार्थे वा ।

260. A debt previously admitted by him should be paid by the householder; also a debt that may have been contracted by any person for the benefit of his family.—(Viṣṇu 6. 38-39.) [Quoted in *Smṛtichandrikā*, p. 407.]

NOTES

In regard to the latter, *Smṛtichandrikā* (p. 407) remarks that, this debt is payable by the man only if it was contracted with his permission.

261. कात्यायन] देयं पुत्रकृतं तत्स्याद्यच्च स्यादनुवर्णितम् ।
कृतं संवादितं यच्च श्रुत्वा चैवानुमोदितम् ॥

261. A debt contracted by the son shall be paid by the father which had been reported to him and on hearing had been approved, and not repudiated by him.—(Kātyāyana in *Smṛtichandrikā*, p. 407.)

NOTES

This rule refers to debts contracted in normal times; if contracted in times of distress, it has to be paid by the father even though he may not hav approved and sanctioned it.—(*Smṛtichandrikā*, p. 407.)

262. नारद] पितुरेव नियोगाद्वा कुटुम्बभरणाय वा ।
कृतं वा यदृणं कृच्छ्रे दद्यात् पुत्रस्य तत् पिता ॥

262. If the son has contracted a debt with the permission of his father, or for the maintenance of the family, or under distressing circumstances,—that debt should be paid by the father.—(Nārada in *Smṛtichandrikā*, p. 407.)

263. कात्यायन] कुटुम्बार्थमशक्ते तु गृहीतं व्याधितेऽपि वा ।
उपप्लवनिमित्तं च विद्यादापत्कृतं च तत् ॥
कन्यावैवाहिकं चैव प्रेतकार्यं च यत् कृतम् ।
एतत्सर्वं प्रदातव्यं कुटुम्बेन कृतं प्रभोः ॥

263. Debts incurred by the family-members, for the maintenance of the family, or when the householder has become incapacitated or ill, or by reason of troubles, or in connection with the marriage of a daughter, or the performance of after-death rites, all these debts should be regarded as 'incurred under distressing circumstances,' and shall be paid by the head of the family.—(Kātyāyana in *Smṛtichandrikā*, p. 408 ; and in *Vivādaratnākara*, p. 56.)

264. नारद] ऋणं पुत्रकृतं पित्रा शोध्यं यदनुमोदितम् ।
सुतस्नेहेन वा दद्यात् नान्यथा दातुमर्हति ॥
कात्यायन] देयं प्रतिश्रुतं यत् स्याद् यच्च स्यादनुवर्णितम् ॥

264. A debt contracted by the son shall be paid by the father only when it has been approved by him ; or he may pay it out of his love for his son ; not otherwise ;—(Nārada and Bṛhaspati in *Smṛtichandrikā*, p. 408)—only when it has been promised by the father or admitted by him on intimation.—(Kātyāyana in *Vivādaratnākara*, p. 57.)

265. कात्यायन] ऋणं पुत्रकृतं पित्रा न देयमिति धर्मतः ॥

265. The father is not legally bound to pay his son's debts.—(Kātyāyana in *Smṛtichandrikā*, p. 409.)

266. याज्ञवल्क्य] न योषित् पतिपुत्राभ्यां न पुत्रेण कृतं पिता ।
दद्यादृते कुटुम्बार्थात् न पतिः स्त्रीकृतं तथा ॥

266. The woman may not pay the debt incurred by her husband and son ; nor the father, that incurred by his son, nor the husband, that incurred by his wife ;—except when it has been incurred for the benefit of the family.—(Yājña, 2. 46.)

267. नारद] न च भार्याकृतमृणं कथञ्चित् पत्युराभवेत् ।
आपत्कृतादृते ॥

267. A debt contracted by the wife shall not fall upon the husband, except when it has been contracted in times of distress.—(Nārada in *Aparārka*, p. 649.)

268. विष्णु] न स्त्रीकृतं पतिपुत्रौ ।

268. Debts contracted by the woman shall not be paid by her husband or son.—(Viṣṇu 6. 32.)

269. याज्ञवल्क्य] गोपशौण्डिकशैलूषरजकव्याधयोषिताम् ।
ऋणं दद्यात् पतिस्तासाम् ॥

269. In the case of cowherds, wine-distillers, actors, dyers, and fowlers,—debts contracted by the wife (even in normal times) should be paid by the husband.—(Yājña. 2. 48 ; also Viṣṇu 6. 37.)

270. मनु 8. 167.] कुटुम्बार्थेऽध्यधीनोऽपि व्यवहारं यमाचरेत् ।
स्वदेशे वा विदेशे वा तं ज्यायान्न विचालयेत् ॥

270. Should even a servant effect a transaction for the sake of the family,—the master, whether in his own country or abroad, should not repudiate it.—(Manu 8. 167.)

NOTES

During the master's absence whatever the servant does for the maintenance of the family must be held to be valid.—(*Medhātithi.*)

LIABILITY OF WOMEN

271. याज्ञवल्क्य] न योषित् पतिपुत्राभ्यां.........
दद्यादृते कुटुम्बार्थान् ॥

271. A woman shall not be liable for the debt contracted by her husband or son, except when it has been incurred for the benefit of the family.—(Yājña. 2.46 ; also Viṣṇu 6. 31.)

272. नारद] न स्त्री पतिकृतं दद्यात् ऋणं पुत्रकृतं तथा ।
अभ्युपेतादृते ॥

272. A woman shall not pay the debt contracted by her husband or son, except when she has accepted the liability.—(Nārada in *Smṛtichandrikā*, p. 412.)

273. याज्ञवल्क्य 2. 49.] प्रतिपन्नं स्त्रिया देयं पत्या वा सह यत् कृतम् ।
स्वयं कृतं वा यदृणं, नान्यत् स्त्री दातुमर्हति ॥

273. The woman shall pay the debt contracted by her husband or son, if she has admitted the liability ; also that contracted by her conjointly with her husband ; and also that contracted by herself ; she shall pay no debts except these.—(Yājña. 2. 49 ; also Kātyāyana in *Smṛtichandrikā*, p. 411, which adds 'or son' after 'husband.')

NOTES

'Admitted'—This refers to a promise made by the wife to her husband, on the point of death or going abroad, that she would pay his debts. —(*Mitākṣarā.*)

'Contracted by herself'—This has been added with a view to indicate that the son shall pay his mother's debts even though they may not have been incurred for the benefit of the family.—(*Aparārka.*)

'She shall pay no debts, etc.'—This has been added to convey the idea that she shall not pay any debts that her husband may have contracted for drinking, gambling and such immoral purposes,—even if she had agreed to pay them, or had contracted them conjointly with her husband.—(*Mitākṣarā.*)

274. कात्यायन] मर्तुकामेन वा भर्त्रा उक्ता देयमृणं त्वया ।
अप्रपन्नापि सा दाप्या धनं यद्याश्रितं स्त्रिया ॥

274. If the dying husband has commanded his wife to pay his debts, she should be made to pay them, if she has taken his assets, although she may not have consented to pay them.—(Kātyāyana in *Vivādaratnākara*, p. 60.)

NOTES

This also refers to the case of the husband going abroad -says *Vivādaratnākara* (p. 60).

275. नारद] दद्याच्चापुत्रविधवा नियुक्ता वा मुमूर्षुणा ।

275. The childless widow shall pay her husband's debts, she has been commanded by him when dying.—(Nārada in *Smṛtichandrikā*, p. 412 ; *Vivādaratnākara*, p. 61.)

JOINT DEBT

276. कात्यायन] एकच्छायाकृतं सर्वं दद्यात्तु प्रोषिते सुतः ।
मृते पितरि पित्रंशं परर्णं न कदाचन ॥

276. If a debt has been contracted by the father conjointly with another person,—it shall be paid in its entirety by the son, if the father has gone abroad ; if the father is dead, then the son shall pay only his father's share of the debt, not the debt of others.—(Kātyāyana in *Vivādaratnākara*, pp. 51 and 52.)

277. नारद] दाप्यः परर्णं ह्येकोऽपि जीवन्नवियुतैः कृतम् ।
मृतेषु तु न तत्पुत्रः परर्णं दातुमर्हति ॥

277. If a debt has been contracted conjointly by several persons, each one of them is liable, during his lifetime, to pay the whole of it ; when they are dead, their sons are liable only for their father's share of the debt.—(Nārada and Kātyāyana in *Vivādaratnākara*, p. 52.)

278. विष्णु 6. 34—36.] अविभक्तैः कृतमृणं तदेकोऽपि यस्तेषाम्मध्ये तिष्ठेत् स दद्यात् । पैतृकमप्यविभक्तानां भ्रातृणाम् । विभक्ताश्च दायानुरूपमंशम् ॥

278. A debt contracted by members of a joint family shall be paid by any one of them who may be present ; so

shall the debt of the father be paid by any one of the brothers before partition; after partition, each of them shall pay in proportion to his share in the inheritance.—(Viṣṇu 6. 34-36.)

279. याज्ञवल्क्य 2. 45.] अविभक्तैः कुटुम्बार्थे यदृणं तु कृतं भवेत् ।
दद्युस्तद्रिक्थिनः प्रेते प्रोषिते वा कुटुम्बिनि ॥

279. After the head of a joint family has died, or gone abroad,—if a debt has been contracted for the benefit of the family by any members of a joint family, it shall be paid by all the coparceners.—(Yājña. 2. 45.)

[See also Sec. 256].

LIABILITY OF THE SON TO PAY THE MOTHER'S DEBT

280. कात्यायन] अमतेनैव पुत्रस्य प्रधना याऽन्यमाश्रयेत् ।
पुत्रेणैवापहार्यं तत् धनं दुहितृभिर्विना ।
ऋणार्थमाहरेत्तत्तु ॥

280. If a woman possessed of large property of her own should go to another man, without the consent of her son,—the son should take away that property except when she has daughters,—but only for the payment of debts.—(Kātyāyana in *Vivādaratnākara*, pp. 64-65.)

281. नारद] पुत्रिणी तु समुत्सृज्य पुत्रं या स्त्र्यन्यमाश्रिता ।
तस्या ऋणं हरेत् सर्वं निःस्वायाः पुत्र एव च ॥

281. If a woman, leaving her son, takes herself to another man,—her son shall pay all her debts, if she has no property of her own.—(Nārada in *Vivādaratnākara*, p. 65.)

282. नारद] या तु सप्रधनैव स्त्री सापत्या चान्यमाश्रयेत् ।
सोऽस्या दद्यादृणं भर्तुरुत्सृजेद्वा तथैव ताम् ॥

282. If the woman, with children, who has taken herself to another man, has large properties of her own, then that man shall pay her husband's debts, or give her up.—(Nārada in *Vivādaratnākara*, p. 65.)

283. कात्यायन] बालपुत्राऽधिकार्थां च भर्तारं याऽन्यमाश्रिता।
आश्रितस्तदृणं दद्यात्।

283. If a woman with a minor son, possessed of large properties, takes herself to another man, that man should pay all her debts.—(Kātyāyana in *Vivādaratnākara*, p. 66).

WHO SHOULD RECEIVE THE DEBT ?

284. नारद] ब्राह्मणस्य तु यद् देयं सान्वयस्य न चास्ति सः।
निवपेत्तत्सकुल्येषु तदभावेऽस्य बन्धुषु ॥
यदा तु न सकुल्याः स्युर्न च सम्बन्धिबान्धवाः।
तदा दद्याद् द्विजेभ्यस्तु तेष्वसत्स्वप्सु निक्षिपेत् ॥

284. The debt due to a Brāhmaṇa should, on his death, be paid to his descendants ; if he has left no descendant, it should be paid to a '*Sakulya*' of his ; failing a '*Sakulya*,' to a '*Bandhu*.' Failing all these, it may be paid to Brāhmaṇas; if there are no Brāhmaṇas available, it should be thrown into water (or *fire*, according to Prajāpati).—(Nārada in *Smṛti-chandrika*, p. 25.)

In the case of creditors belonging to the Kṣattriya and other castes,—if they leave no heirs—the debt shall be paid to the king.—(*Vivādachintāmaṇi.*)

If the creditor has taken no notice of the debt due to him, for ten years, he shall not be entitled to receive payment, except in cases where the neglect has been due to his being a minor, or too old, or too ill, or in trouble, or having gone abroad, or having left the country entirely, or to anarchy.—(*Arthashāstra*, 3.11.)

CHAPTER VI

DEPOSITS

PRELIMINARY NOTE

There are five kinds of transactions--more or less similar—that have been dealt with under this head of '*Nikṣēpa*,' 'Deposit,' which has been thus defined by Nārada (in *Vivādaratnākara*, p. 83 and *Vīramitrodaya*, p. 361)—'When a man, through complete confidence, entrusts his property to another man, it is called *Deposit* in general'; and by Vyāsa (in *Smṛtichandrikā*, p. 415) as—'When a man,—by reason of his leaving the place, or through fear of the king, or for the purpose of deceiving his heirs,—entrusts his property to another person, it is called *Deposit* in general.'—This *Deposit* has been dealt with under five heads :—(1) When the property is handed over openly to the depository himself after having been counted, it is called '*Nikṣēpa*' proper, *Open Deposit* (Nārada in *Vīramitrodaya*, p. 361) ;—(2) '*Upanidhi*,' *Sealed Deposit*, thus defined—'When the property is handed over closed and sealed within a box, without the contents being disclosed or described or counted, it is called *Upanidhi*, 'Sealed Deposit'—(Yājña. 2. 65; Bṛhaspati, 12. 3; Nārada in *Vīramitrodaya*, p. 361)* ;—(3) '*Nyāsa* is that deposit which has been handed over, not personally to the depository himself, but in his absence to his son or other relatives, with the request that it should be delivered to the master of the house when he comes home (*Smṛtichandrikā*, p. 416, *Vivādaratnākara*, p. 83, *Vīramitrodaya*, p. 416) ;—(4) When an ornament or such other small article is borrowed for a special occasion like a marriage, it is called '*Yāchita*' (*Vivādaratnākara*, p. 84; *Aparārka*, p. 662);—(5) When a deposit entrusted to a person is made over to a third party for being delivered to the original owner, it

---

* Kātyāyana (in *Vivādaratnākara*, p. 84) makes the term '*Upanidhi*' include all the following :—

(1) Purchased article entrusted to the vendor temporarily.
(2) Article entrusted by a man going out on a long journey.
(3) Pledge.
(4) Small articles borrowed for a special occasion.
(5) What is handed over for investing.

is called, '*Anvāhita*,' *Bailment for Delivery*.—(*Vivādaratnākara*, p. 84 ; *Mayūkha*, p. 192.)

According to Yājña. 2. 67b, the rules relating to '*Nikṣēpa*' *Deposit*, are applicable also to the other cases.

WHEN THE DEPOSITORY IS NOT LIABLE FOR LOSS OR DAMAGE

1. बृहस्पति] दैवराजोपघातेन यदि तन्नाशमाप्नुयात् ।
ग्रहीतृद्रव्यसहितं तत्र दोषो न विद्यते ॥

1. If the deposit be destroyed by some act of God or king, along with the property of the depository himself,—then no blame attaches to the depository.—(Bṛhaspati 12. 10.) [Quoted in *Smṛtichandrikā*, p. 47 and *Vivādaratnākara*, p. 88.]

NOTES

'*Some act of God or king*,'—this stands for all those causes over which the depository has no control.—(*Smṛtichandrikā*, p. 47.)

2. कात्यायन] अराजदैवकेनापि निक्षिप्तं यत्र नाशितम् ।
ग्रहीतुस्सह भाण्डेन दातुर्नष्टं तदुच्यते ॥

2. Even without any act of God or king, if the deposit happen to be destroyed along with the depository's own property, then the loss is of the depositors, (and the depository is not liable for it).—(Kātyāyana in *Vivādaratnākara*, p. 38, and in *Smṛtichandrikā*, p. 417.)

3. नारद] ग्रहीतुः सह योऽर्थेन नष्टो नष्टः स दायिनः ।
दैवराजहृते तद्वन्न चेत्तज्जिह्मकारितम् ॥

3. If the deposit has been destroyed along with the depository's property, the loss is the depositor's ; so also when the destruction has been due to an act of God or king ;—except when it has been due to the dishonesty of the depository.—(Nārada in *Vivādaratnākara*, p. 88, and in *Smṛtichandrikā*, p. 417.)

4. मनु 8.189.] चौरैर्हृतं जलेनोढमग्निना दग्धमेव वा ।
न दद्याद्यदि तस्मात्स न संहरति किञ्चन ॥

4. If the deposit is stolen, or washed away by water, or burnt, the depository shall not have to make good the loss,—if he has not extracted anything from it.— (Manu 8. 189.)

5. मनु 8.188.] समुद्रे नाप्नुयात् किञ्चित् यदि तस्मान्न संहरेत् ॥

5. In the case of the loss of a sealed deposit, the depository incurs no liability, if he has not extracted anything from it.—(Manu 8. 188.)

6. कात्यायन] ज्ञात्वा द्रव्यवियोगं तु दाता यत्र विनिक्षिपेत् ।
सर्वोपायविनाशेऽपि ग्रहीता नैव दाप्यते ॥

6. If the depositor has made the deposit with full knowledge of the risks involved, then the depository is not liable for the loss of the deposit.—(Kātyāyana in *Smṛtichandrikā*, p. 418.)

NOTES

This rule applies also in those cases where the loss has been due to causes other than those already apprehended previously by the depositor.—(*Vivādaratnākara*, p. 89.)

7. याज्ञवल्क्य 2.66.] न दाप्योऽपहृतं तत्तु राजदैविकतस्करैः ।

7. If the deposit has been destroyed by an act of God or of the king, or if it has been stolen,—the depository is not required to make good the loss.—(Yājña. 2.66.)

8. गौतम] निध्यन्वाधियाचितावक्रीतादयो नष्टा सर्वाननन्दितान् पुरुषापराधेन (नाध्याभवेयुः)

8. Deposits, articles bailed for delivery, articles borrowed, and articles purchased,—if these are lost without any remissness on the part of the depository, the depository or his heirs are not required to make good the loss.—(Gautama in *Vivādaratnākara*, p. 89.)

WHEN THE DEPOSITORY IS LIABLE FOR LOSS

9. कात्यायन] निक्षिप्तं यस्य यत् किञ्चित् तत् प्रयत्नेन पालयेत् ।
दैवराजकृतादन्यो विनाशस्तस्य कीर्त्यते ॥

9. When anything is entrusted to a person, he should keep the deposit with care ; if it is lost, the loss is declared to be of the depository, except when the loss has been due to an act of God or king.—(Kātyāyana in *Smṛtichandrikā*, p. 419.)

10. कात्यायन] यस्य दोषेण यत् किञ्चित् विनाश्येत ह्रियेत वा ।
तद् द्रव्यं स देयं दाप्यो दैवराजकृताद्विना ॥

10. If a deposit is lost or stolen by reason of the remissness of any person, that person should be made to pay its

price with interest; except when the loss has been due to an act of God or king.—(Kātyāyana in *Smṛtichandrikā*, p. 419.)

11. बृहस्पति 12.11.] भेदेनोपेक्षया न्यासं ग्रहीता यदि नाशयेत् ।
याच्यमानो न दद्याद्वा दाप्यस्तत् सोदयं भवेत् ॥

11. If the deposit is lost by reason of the neglect due to the depository making a distinction (between the deposit and his own property) in the matter of care bestowed upon it,—or if he fails to restore the deposit when asked to do so,—he should be made to pay its price with interest.—(Bṛhaspati, 12. 11.) [Quoted in *Smṛtichandrikā*, p. 419.]

NOTES

The interest charged is at the rate of the 80th part of the principal.

12. बृहस्पति] याच्यमानो न चेद् दद्यात् वर्धते पञ्चकं शतम् ।

12. If the depository fails to restore the deposit, it bears interest from that day at the rate of 5 per cent.—(Bṛhaspati in *Smṛtichandrikā*, p. 419.)

13. कात्यायन] याचितानन्तरं नाशे दैवराजकृतेऽपि सः ।
ग्रहीता प्रतिदाप्यः स्यात् ।

13. If the deposit should be lost after it has been demanded by the depositor,—and not restored by the depository,—the depository should be made to pay its price, even though the loss be due to an act of God or king.—(Kātyāyana in *Smṛtichandrikā*, p. 420; attributed to Vyāsa in *Vīramitrodaya*, p. 364.)

14. याज्ञवल्क्य 2.66.] भ्रंशश्चेन्मार्गितेऽदत्ते दाप्यो दण्डं च तत्समम् ॥

14. If the deposit is lost after it has been demanded by the depositor—and not restored by the depository,—he should be made to pay its price to the depositor and also punished with a fine equal to the price.—(Yājña. 2. 66.)

15. नारद] याच्यमानस्तु यो दातुं निक्षेपं न प्रयच्छति ।
दण्ड्यः स राज्ञो भवति नष्टे दाप्यश्च तत्समम् ॥

15. If the depository does not restore the deposit on demand he should be fined by the king ; and in case the deposit has been lost, he should be made to pay its price to the depositor.—(Nārada in *Vīramitrodaya*, p. 365, and in *Smṛtichandrikā*, p. 420 ; *Vivādaratnākara*, p. 90.)

16. याज्ञवल्क्य] आजीवन् स्वेच्छया दण्ड्यो दाप्यस्तं चापि सोदयम् ॥
नारद] यत्रार्थं साधयेत्तेन निक्षेप्तुरननुज्ञया ।
तत्रापि स भवेद् दण्ड्यः तं च सोदयमावहेत् ॥

16. If, without the permission of the depositor, the depository uses the deposit, he should be fined and made to pay to the depositor the value of the use made along with interest.—(Yājña. 2. 67 Nārada in *Vivādaratnākara*, p. 90 and in *Smṛtichandrikā*, p. 420 ; also Bṛhaspati in *Vivādaratnākara*, p. 91.)

NOTES

'*Uses*'—*i,e.*, spends out of it, or enjoys it, or invests it on profit.

If the depository makes use of the article deposited, he shall pay for such use, as also a fine of 12 *Paṇas* ; -if, by such use, the article is damaged or destroyed (or stolen), he shall have to make good the loss, and also pay a fine of 24 *Paṇas* ;- so also if the deposit is otherwise untraceable.—(*Arthashāstra*, 3.12.)

17. व्यास] भक्षितं सोदयं दाप्यः, समं दाप्य उपेक्षितम् ।
किञ्चिन्न्यूनं प्रदाप्यः स्याद् द्रव्यमज्ञाननाशितम् ॥

17. If it has been used up, he is to pay the price with interest ;—if it has been neglected, he should pay just the price ; – if it has been lost through stupidity, he should pay a little less.—(Vyāsa in *Smṛtichandrikā*, p 421, and in *Vīramitrodaya*, p. 364.)

18. विष्णु 5.169—171.] निक्षेपापहारी वृद्धिसहितं धनं धनिकस्य दाप्यः ।
चौरवद् दण्ड्यश्च ।

18. He who misappropriates a deposit should be made to pay to the owner its price with interest ;—and punished as a thief.—(Viṣṇu 5, 169–171.) [Quoted in *Smṛtichandrikā*, p. 421,]

NOTES

The same punishment has been ordained for one who claims a deposit falsely.

19. मनु 8.192.] निक्षेपस्यापहर्तारं तत्समं दापयेद्दमम् ।
तथोपनिधिहर्तारम् ॥

19. In all cases the appropriator of a deposit shall be made to pay a fine equal in value to it ; also the appropriator of a friendly loan.—(Manu 8. 192.)

NOTES

Manu (8. 191) has laid down the punishment to be like that of the thief for one who fails to restore a deposit; under that rule there are two alternative punishments; corporeal punishment and fine equal in value to the property involved ; to be determined according to the caste of the accused. So that in the case of castes other than the Brāhmaṇa, it would, under the said rule, be open to the king to inflict either of the two forms of punishment. It is this possibility that is precluded by the present rule which restricts the punishment to fine only ; all therefore that may be added to the fine is *admonition* or reprimand, and *not* mutilation and other corporeal punishments.—(*Medhātithi.*)

The alternative punishment is to be determined by the quality and quantity of the property involved.—(*Vivādaratnākara*, p. 92.)

20. व्यास] निक्षेपं निह्नुते यस्तु नरो बन्धुबलान्वितः ।
साक्षिभिर्वाऽथदिव्येन विभाव्य प्रतिदाप्यते ॥

20. If a man, on the strength of his relations, denies a deposit, it should be proved by means of witnesses, or (in the absence of witnesses) by ordeal, and then the man should be made to restore it.—(Vyāsa in *Smṛtichandrikā*, p. 421, and *Vīramitrodaya*, p. 365.)

NOTES

According to the *Smṛtichandrikā*, the man should merely restore the deposit, or pay its price,—without having to pay anything by way of interest.

21. बृहस्पति 12.13.] गृहीत्वाऽपह्नुते यत्र साक्षिभिः शपथेन वा ।
विभाव्य दापयेन्न्यासं तत्समं विनयं तथा ॥

21. If a man denies a deposit, and it is proved by means of witnesses or oaths, he should be made to restore the deposit and also to pay a fine equal in value to the deposit.—(Bṛhaspati 72. 13 ; in *Smṛtichandrikā*, p. 421.)

22. मनु 8.181—184.] यो निक्षेपं याच्यमानो निक्षेप्तुर्न प्रयच्छति ।
स याच्यः प्राड्विवाकेन तन्निक्षेप्तुरसन्निधौ ॥
साक्ष्यभावे प्रणिधिभिर्वयोरूपसमन्वितैः ।
अपदेशैश्च संन्यस्य हिरण्यं तस्य तत्त्वतः ॥
स यदि प्रतिपद्येत यथान्यस्तं यथाकृतम् ।
न तत्र विद्यते किञ्चित् यत्परैरभियुज्यते ॥
तेषां न दद्याद्यदि तु तद्धिरण्यं यथाविधि ।
सन्निगृह्योभयं दाप्य इति धर्मस्य धारणा ॥

22. When requested to restore the deposit, if the depository does not restore it to the depositor,—then on the departure of that depositor, in the event of there being no witnesses, the judge shall actually deposit gold (with the alleged depository) through spies of proper age and appearance, under some pretexts, and then ask him to restore it.—If he admits the deposit exactly in the form and shape in which it was entrusted,—then there is nothing in the charge brought against him by others. If, however, he should not restore that gold to them in the proper manner, he should be forced to restore both ; such is the law.—(Manu 8.181—184.)

23. मनु 8.190-191.] निक्षेपस्यापहर्तारमनिक्षेप्तारमेव च ।
सर्वैरुपायैरन्विच्छेत् शपथैश्चैव वैदिकैः ॥
यो निक्षेपं नार्पयति यश्चानिक्षिप्य याचते ।
तावुभौ चौरवच्छास्यौ दाप्यौ वा तत्समं दमम् ॥

23. The man who appropriates a deposit, and fails to restore it on demand,—as also the man who never made any deposit and still claims it,—shall be tested by oaths, ordeals and other methods ; he who does not restore a deposit and he who, without making a deposit, claims it,—both of them shall be punished like thieves, or be made to pay a fine equal in value to the deposit.—(Manu 8.190-191.)

NOTES

If the property involved is valuable, then alone should 'the punishment of the thief' be inflicted; in ordinary cases, he should be fined; in either case, the depositor is to be made to restore the deposit.—(*Vivādaratnākara*, p. 91.)

24. मत्स्यपुराण] यो नार्पयति निक्षेपं यस्त्वनिक्षिप्य याचते ।
तावुभौ चौरवच्छास्यौ दाप्यौ वा द्विगुणं दमम् ॥

24. In cases where the depositor does not restore the deposit,—or a man, without making a deposit, claims it,—the guilty party should be punished like a thief, or fined double the amount of the claim.—(Matsyapurāṇa in *Vivādaratnākara*, p. 91.)

NOTES

The 'double fine' is meant for those cases where the guilty party is wealthy and is known to be of despicable character. —(*Vivādaratnākara*, p. 92.)

25. मनु 8.193.] उपधाभिश्च यः कश्चित् परद्रव्यं हरेन्नरः ।
ससहायः स हन्तव्यः प्रकाशं विविधैर्वधैः ॥

25. The man who would appropriate, by fraudulent means, the property of another person, should be punished publicly, along with his accomplices, with various modes of corporeal punishment.—(Manu 8.193.)

NOTES

In the case of deposits, the 'fraudulent means' would consist in putting off the restoration by such pretexts as—'I do not remember where I kept the thing,' 'it was kept by some one else who is not here at present,' and so forth.—(*Medhātithi.*)

26. मनु 8.194.] निक्षेपो यः कृतो येन यावांश्च कुलसन्निधौ ।
तावानेव स विज्ञेयो विब्रुवन् दण्डमर्हति ॥

26. The quality and quantity of a deposit should be decided to be exactly what they were when the deposit was delivered to the depository in the presence of witnesses;—the party misrepresenting them is liable to punishment.—(Manu 8.194.)

NOTES

The man who makes an assertion contrary to what the witnesses declare is to be punished.

27. बृहस्पति 12. 15.] अन्वाहिते याचितके शिल्पन्यासे सबन्धके ।
एष एवोदितो धर्मस्तथा च शरणागते ॥
नारद] एष एव विधिर्दृष्टो याचितान्वाहितादिषु ।
शिल्पिषूपनिधौ न्यासे प्रतिन्यासे तथैव च ॥
प्रतिगृह्णाति पोगंडं यश्च सप्रधनं नरः ॥

27. The rules laid down above are applicable also to cases of—(*a*) Bailment for delivery, (*b*) loan for a special purpose, (*c*) articles made over to artists, (*d*) pledges, and (*e*) persons seeking refuge—(Bṛhaspati, 12. 15);—also to (*f*) mutual deposit and (*g*) guardianship of a rich minor.—(Nārada in *Vivādaratnākara*, p. 96.)

NOTES

'*Articles made over to artists,*'—*e.g.*, when gold is made over to the goldsmith for making bracelets and other ornaments.—(*Smṛtichandrikā*, p. 426.)

'*Persons seeking refuge,*'—*e.g.*, when there is a dispute between a slave and his alleged owner, the slave runs away, and seeks refuge with another person.

'*Pratinyāsa,*' is mutual deposit,—A, entrusting his property to B, and B entrusting his to A. But according to *Mayūkha* (p. 193) it is A depositing with B and B depositing with C.

28. कात्यायन] यैश्च संस्क्रियते न्यासो दिवसैः परिनिष्ठितैः ।
तदूर्ध्वं स्थापयञ्छिल्पी दाप्यो दैवहतेऽपि तम् ॥

28. When an artist has undertaken to repair or renew an article within a stipulated time,—if he keeps the article beyond that time and it is destroyed or lost,—the artist should be made to pay for it,—even though the loss may have been due to an act of God.—(Kātyāyana in *Vivādaratnākara*, p. 98, and in *Smṛtichandrikā*, p. 426.)

29. कात्यायन] न्यासदोषाद्विनाशः स्याच्छिल्पिनस्तन्न दापयेत् ।
दापयेच्छिल्पिदोषाच्च संस्कारार्थं यदर्पितम् ॥

29. If the destruction of an article given for repairs has been due to some defect in the article itself, then the artist should not be made to pay its value; but he should be made to pay if it has been due to some fault of his own.—(Kātyāyana in *Smṛtichandrikā*, p. 426.)

NOTES

If the article, *e.g.*, was an old one and hence perishes in the process of cleaning or repairing, then the cleaner cannot be held liable for the loss ; but if the destruction has been due to inefficient handling by the artist, then he must be held liable.—(*Smṛtichandrikā*, p. 426.)

30. कात्यायन] स्वल्पेनापि च यत् कर्म नष्टं चेद् भृतकस्य तत् ।
पर्याहं दित्सतस्तस्य विनश्येत्तद्गृह्णतः ॥

30. In a case where crude material has been made over to the manufacturer,—if the article being manufactured should happen to be destroyed or lost before it is finished, the liability of the loss lies on the manufacturer. But if the loss should happen after the finished product has been offered to the owner but not received by him,—then the liability lies with the owner who refused to take delivery of it.—(Kātyāyana in *Smṛtichandrikā*, p. 427 and in *Vivādaratnākara*, p. 98.)

NOTES

For example, when a quantity of yarn has been made over to the weaver, if he loses it after a part only of the cloth has been woven, then he should re-weave the entire cloth ; but if the entire cloth has been woven and offered by the weaver to the owner who has been requested to take delivery of it,—then for any loss occurring after that,—the weaver should not be liable.—(*Vivādaratnākara*, p. 98.)

31. कात्यायन] यो याचितकमादाय न दद्यात् प्रतियाचितः ।
स निगृह्य बलाद्दाप्यो दण्ड्यश्च न ददाति यः ॥

31. In the case of 'things borrowed for a special purpose' if the borrower fails to restore the thing on demand, he should be caught and forced to restore it and should also be fined.—(Kātyāyana in *Smṛtichandrikā*, p. 429.)

32. मत्स्यपुराण] यो याचितकमादाय न दद्यात् तत् तथाविधम् ।
स निगृह्य बलाद् दाप्यो दण्ड्यो वा पूर्वसाहसम् ॥

32. Having borrowed a thing for a special purpose, if the borrower fail to restore it in the same condition, he should be caught and forced to restore it, and should be fined the first amercement.—(Matsyapurāṇa in *Vivādaratnākara*, p. 97.)

33. कात्यायन] यदि तत् कार्यमुद्दिश्य कालं परिनियम्य वा ।
याचितोऽर्थकृते तस्मिन्नप्राप्ते न तु दाप्यते ॥

33. If the thing has been borrowed for a special work, or for a stipulated time,—then in the event of the borrower refusing to restore it, either before the said work has been completed, or before the stipulated time has lapsed,—the borrower should not be forced to restore it.—(Kātyāyana in *Smṛtichandrikā*, p. 427.)

34. कात्यायन] प्राप्तकाले कृते कार्ये न दद्याद् याचितोऽपि सन् ।
तस्मिन्नष्टे हृते वापि ग्रहीता मूल्यमाहरेत् ॥

34. If after the completion of the work, or the lapse of the stipulated time, the borrower fails to restore it, even though asked to do so,—then, in the event of its being lost, or stolen, the borrower should pay its value.—(Kātyāyana in *Smṛtichandrikā*, p. 428.)

NOTES

This applies also to cases where the loss has been due to circumstances beyond the man's control.—(*Smṛtichandrikā*, p. 428.)

35. कात्यायन] अथ कार्यविपत्तिस्तु तस्यैव स्वामिनो भवेत् ।
अप्राप्ते वै स काले तु दाप्यस्त्वर्थकृतेऽपि तत् ॥

35. But even before the completion of the work—or before the lapse of the stipulated time,—if it so happens that any further retention of the thing by the borrower would cause injury to the owner's interests, then the borrower must restore it.—(Kātyāyana in *Smṛtichandrikā*, p. 428 and in *Vivādaratnākara*, p. 93.)

NOTES

If he does not restore it, he should be made to pay its price with interest, says *Smṛtichandrikā* (p. 428).

36. नारद 2. 238.] मूल्याष्टभागो हीयेत सकृद्धौतस्य वाससः।
द्विपादस्त्रिस्तृतीयांशश्चतुर्धौतेऽर्धमेव च ॥

36. If a washerman loses a cloth given to him to wash, he shall pay its price less by its eighth part, if the cloth has undergone only one washing; less by its fourth part if it had undergone two washings; less by its third part, if it had undergone three washings; and less by half if it had undergone four washings.—(Nārada in *Vīramitrodaya*, p. 372.)

37. याज्ञवल्क्य] वसानस्त्रीन् पणान् दाप्यो नेजकस्तु परांशुकम्।
विक्रयावक्रयाधानयाचितेषु पणान् दश ॥

37. If the washerman wears the cloth given to him to wash, he should be fined three *Paṇas*; if he sells it, or gives it out on hire, or pledges it, or lends it for a special purpose, he should be fined 10 *Paṇas*.—(Yājña 2. 238.)

38. याज्ञवल्क्य 2. 178-180.] अग्नौ सुवर्णमक्षीणम्, रजतं द्विपलं शते।
अष्टौ त्रपुणि सीसे च ताम्रे पञ्च दशायसि ॥
शते दशपला वृद्धिरौर्णे कार्पासिके तथा।
मध्ये पञ्चपला वृद्धिः सूक्ष्मे तु त्रिपला मता ॥
कार्मिके रोमबद्धे च त्रिंशद्भागः क्षयो मतः।
न क्षयो न च वृद्धिः स्यात् कौशेये वल्कलेषु च ॥

38. In fire gold remains unconsumed, it does not lose in weight; silver loses 2 per cent in weight; zinc and lead lose 8 per cent; copper, 5 per cent; iron, 10 per cent; coarse wool and cotton yarn gain 10 per cent in weight on being woven; wool and cotton yarn on middling count gains 5 per cent; those of the finer counts gain 3 per cent; but in the case of embroidered cloths, there is a loss of the thirtieth part; in the case of silk and tree-bark, there is neither loss nor gain in weight.—(Yājña. 2. 178—180.)

NOTES

These proportions are to be borne in mind when making over the crude material to the manufacturer and receiving from him the finished product.—(*Vīramitrodaya*, p. 373.)

RULES FOR THE DEPOSITOR AND THE DEPOSITORY

39. बृहस्पति 12. 4.] स्थानं गृहं गृहस्थं च तद्वर्णं विविधान् गुणान् ।
सत्यं शौचं बन्धुजनं परीक्ष्य स्थापयेन्निधिम् ॥

39. One should entrust a deposit to another person after having fully examined the character of the place, house, the householder, and his caste, his many qualities, veracity and kindred.—(Bṛhaspati, 12. 4.) [Quoted in *Smṛtichandrikā*, p. 415.]

40. बृहस्पति 12. 9.] स्थापितं येन विधिना येन यच्च यथाविधि ।
तथैव तस्य तद्देयं न देयं प्रत्यनन्तरे ॥

40. The depositary shall restore the deposit exactly as it had been entrusted to him, in the same manner and to the same person ; it should never be restored to the depositor's next of kin (son and others).—(Bṛhaspati, 12. 9.) [Quoted in *Smṛtichandrikā*, p. 421.]

41. मनु 8. 180.] यो यथा निक्षिपेद्धस्ते यमर्थं यस्य मानवः ।
स तथैव ग्रहीतव्यो यथा दायस्तथा ग्रहः ॥

41. In the form in which one shall deposit a thing with another person, in that same form shall that thing be received back ; as the delivery so the recovery.—(Manu, 8. 180.)

42. मनु 8. 195.] मिथो दायः कृतो येन गृहीतो मिथ एव वा ।
मिथ एव प्रदातव्यो यथा दायस्तथा ग्रहः ॥

42. When a trust has been created privately and accepted also privately, then it should be restored also privately ; as the delivery so the recovery.—(Manu, 8. 195.)

NOTES

If the deposit was delivered as an open one, it should be restored as open ; if it was delivered sealed, it should be restored sealed ; if it was delivered before witnesses, it should be restored before witnesses ; if it was delivered without witnesses, it should be delivered without witnesses ; if it was delivered by the depositor singly by himself, it should be restored by the depositary singly by himself ; if it was delivered by the depositor along with others, it shall be delivered by the depositary along with others.—(*Vivādaratnākara*, p. 86.)

This is a rule that applies to all transactions ; but in the matter of deposits, it is absolute.—(*Medhātithi.*)

43. कात्यायन] ग्राह्यस्तूपनिधिः काले कालहीनं तु वर्जयेत् ।
कालहीनं ददद् दण्डं द्विगुणं च प्रदाप्यते ॥

43. The depositor shall receive back the deposit only at the proper time, and never at the wrong time. If the depositary restores it at the wrong time (without being asked to do it) he should be fined double the value of the deposit.—(Kātyāyana in *Smṛtichandrikā*, p. 422 and in *Vivādaratnākara*, p. 93.)

NOTES

'*Proper time*,'—*i.e.*, on the passing of the danger by fear of which he had entrusted his property to the other man (*Smṛtichandrikā*);—at the stipulated time (*Vivādaratnākara*). If the depositary restores the deposit before the lapse of the stipulated time, he does it through sheer wickedness and hence deserves punishment.—(*Vivādaratnākara*.)

44. बृहस्पति 12. 14.] रहोदत्ते निधौ यत्र विसंवादः प्रजायते ।
विभावकं तत्र दिव्यमुभयोरपि च स्मृतम् ॥

44. In a case where the deposit has been delivered privately,—if a dispute should arise,—the only proof possible is the ordeal for both.—(Bṛhaspati, 12. 14.) [Quoted in *Smṛtichandrikā*, pp. 422-423.]

NOTES

'*Ordeal*'—to be gone through by one or the other party—(*Aparārka*, p. 664; *Smṛtichandrikā*, p. 422 and *Vīramitrodaya*, p. 366);—by both parties —(*Vivādaratnākara*, p. 95.)

45. नारद] स पुनर्द्विविधः प्रोक्तः साक्षिमानितरस्तथा ।
प्रतिदानं तथैवास्य ।

45. Deposits are of two kinds—with and without witnesses; the restoring also should be with or without witnesses respectively.—(Nārada in *Vivādaratnākara*, p. 85; also Bṛhaspati, 12. 8.)

RESTORING TO THE DEPOSITOR'S NEXT-OF-KIN

46. मनु 8. 185.] निक्षेपोपनिधी नित्यं न देयौ प्रत्यनन्तरे ॥

46. Deposits, open or sealed, should never be restored to the next-of-kin.—(Manu, 8. 185.)

NOTES

When the depositor who is living happens to be absent, the depositary should not hand over the deposit to the depositor's next-of-kin ; for if these latter go away, and the depositor demands it of the depositary, the latter will have to make it good.—(*Vivādaratnākara*, p. 87.)

'*Next-of-kin*'—Son, brother or wife.—(*Medhātithi*.)

47. मनु 8. 186.] स्वयमेव तु यो दद्यान्मृतस्य प्रत्यनन्तरे ।
न स राज्ञाऽभियोक्तव्यो न निक्षेप्तुश्च बन्धुभिः ॥

47. If, on the death of the depositor, the depositary, without being asked, restores the deposit to the depositor's next-of-kin,—he should not be harassed by the king or by the depositor's relatives.—(Manu, 8. 186.)

NOTES

The depository shall not return the deposit to the next-of-kin before the lapse of the stipulated time, unless he is asked to do so.—If the depositor has left several heirs, the deposit should be restored in the presence of all of them.—(*Smṛtichandrikā*, p. 424.)

48. मनु 8. 187.] अच्छलेनैव चान्विच्छेत् तमर्थं प्रीतिपूर्वकम् ।
विचार्य तस्य वा वृत्तं साम्नैव परिसाधयेत् ॥

48. In the event of the depositary not restoring the deposit to the heir on the depositor's death, the heir should try to secure it in a straightforward and friendly manner ; or being assured of the character of the depositary, he shall settle the matter by gentle means.—(Manu, 8.187.)

NOTES

If it is found out that the Depository is not honest in his dealings, the heir shall adopt artifices and other strong measures.—(*Vivādaratnākara*, p. 94.)

On the death of the depositary, the person to whom the possession of the deposit passes should restore it to the depositor.—(*Smṛtichandrika*, p. 424.)

The Arthashāstra (3. 12) has the following rules on the subject of Deposits :—

(*a*) If the depository returns the article deposited by one person to another person, he shall lose the deposit and shall make good the loss to the actual depositor.

(*b*) Under the following circumstances, the depositary shall not be compelled to restore the deposit :—when the fort or the kingdom has been plundered by the enemy's soldiers or robbers ;—when the village, or the trade-corporations or the cow-pen has been plundered by thieves ;—when the deposit has been destroyed as

the result of an intrigue;—when the village has been burnt by fire or washed away by floods, though he may have saved such parts of the deposit as could be saved and failed to save only what could not be saved; - or when the flames prevented him from saving anything; - when the boat bearing the article has sunk or has been robbed.

(c) If certain commodities have been made over to an employee, for the purpose of carrying on the sale of the merchandise, the servant shall carry on the sale, and having sold the commodities in due course of time, shall pay to his employer all that has been obtained by the sale—the price of the commodities and also the profit made.—If however he has sold them at the prices fixed by his employer, he shall pay these prices and not the profits that he may have made.—If the prices received have been lower than those fixed by the employer, he shall hand over to him whatever may have been received.—If the sale-agents are trustworthy persons, they should not be made to make good any loss that may be incurred by the loss or deterioration of the commodities.—If the commodities were made over for sale at other places, and at other times, the agents shall pay the prices obtained along with the profits—after having deducted from them the wastage and also the costs incurred in the keeping of the articles —If the agent has taken the merchandise to foreign lands and has brought from there other commodities, he shall be given a share of the profits made on the sale of these latter commodities.—(*Arthashāstra*, 3. 12.)

CHAPTER VII

SALE WITHOUT OWNERSHIP

DEFINITION

1. नारद] निक्षिप्तं वा परद्रव्यं नष्टं लब्ध्वाऽपहृत्य वा ।
विक्रीयतेऽसमक्षं यत् स ज्ञेयोऽस्वामिविक्रयः ॥

1. When a man sells another person's chattel behind his back,—either what has been deposited with him, or what had been lost and found by him, or what he has stolen from the owner,—it is called 'sale without ownership.'—(Nārada in *Vivādaratnākara*, p. 100.)

2. व्यास] याचितान्वाहितन्यासं हृत्वा वाऽन्यस्य यद्धनम् ।
विक्रीयते स्वाम्यभावे स ज्ञेयोऽस्वामिविक्रयः ॥

2. When a man sells another person's chattel behind the latter's back,—either what has been bailed to him for delivery, or what has been deposited with him, or what he had borrowed for use on a special occasion,—it is a case of 'sale without ownership.'—(Vyāsa in *Vivādaratnākara*, p. 100 and in *Vīramitrodaya*, p. 374.)

3. बृहस्पति 13. 2.] निक्षेपान्वाहितन्यासहृतबन्धकयाचितम् ।
उपांशु येन विक्रीतमस्वामी सोऽभिधीयते ॥

3. An open deposit, a bailment for delivery, a sealed deposit, stolen property, a pledge, or what has been borrowed for use,—when anyone of these is sold by a man secretly, he is regarded as selling it 'without ownership.'—(Bṛhaspati 13. 2; *Vivādaratnākara*, p. 100.)

WHAT SHOULD BE DONE BY THE RIGHTFUL OWNER

4. नारद] द्रव्यमस्वामिविक्रीतं प्राप्तुः स्वामी तदाप्नुयात् ॥

4. When an article has been sold by a person who is not the owner, the rightful owner should obtain it from the purchaser.—(Nārada in *Smṛtichandrikā*, p. 498.)

5. याज्ञवल्क्य 2. 168.] स्वं लभेतान्यविक्रीतं क्रेतुर्दोषोऽप्रकाशिते ।

5. When a chattel has been sold by one who is not the owner, the owner should recover it from the purchaser, who would be held to blame if he could not produce the vendor.—(Yājña. 2. 168.)

6. कात्यायन] नाष्टिकस्तु प्रकुर्वीत तद्धनं ज्ञातृभिः स्वकम् ।

6. If a man has lost his chattel (and discovers it in the possession of some one else), he should, first of all, prove, by means of witnesses and other evidence, his ownership over that chattel.—(Kātyāyana in *Vivādaratnākara*, p. 104.)

NOTES

The whole procedure is thus summed up by *Vivādaratnākara* (p. 106) :—

(1) The owner has to prove that the chattel belongs to him ;

(2) In order to clear himself, the purchaser should prove that he is a *bona fide* purchaser ;

(3) In support of this, he should produce the vendor ;

(4) If he is unable to trace and produce the vendor, he should prove, that his purchase was open and public, by means of witnesses or other proofs. (See below.)

7. कात्यायन] अदत्तत्यक्तविक्रीतं कृत्वा स्वं लभते धनम् ॥

7. If the owner succeeds in proving that the chattel had never been given away, or abandoned, or sold by him, then he establishes his ownership and obtains the chattel.—(Kātyāyana in *Smṛtichandrikā*, p. 502 and *Vivādaratnākara*, p. 104.)

8. याज्ञवल्क्य 2. 169.] नष्टापहृतमासाद्य हर्तारं ग्राहयेन्नरम् ।
देशकालातिपत्तौ च गृहीत्वा स्वयमर्पयेत् ॥

8. On discovering a chattel that he had lost, or which had been stolen from him, the owner shall have the person in whose possession the chattel has been found arrested (by the king's officers) ; if the exigencies of time and place lead him to fear that the man would abscond if he went to report the matter (to the king's officers), then he should arrest him himself and hand him over (to the king's officers).—(Yājña. 2. 169 and *Arthashāstra*, 3. 16.)

NOTES

The above is the rendering of the rule as explained by *Aparārka*, *Mitākṣarā*, *Smṛtichandrikā* (p. 499) and *Vīramitrodaya* (p. 376). According to *Vivādaratnākara* the text embodies the following rule—'Having acquired a chattel by purchase and other means of acquisition,—if the purchaser happen to be accused by the owner of having stolen his goods, he should get arrested the person who had sold it to him ; if he is unable to catch him, he should, on being convinced of the ownership of his accuser, himself hand over the chattel to him.'

The further procedure is thus prescribed in the *Arthashāstra* :—The officer shall thereupon question the man in possession—'From where did you obtain this thing ?'—If the man succeeds in showing the manner of his acquisition,—but is unable to produce the man who sold it to him,—he shall only be made to restore the chattel to its owner (the claimant) and allowed to go without punishment.—If the man can produce the man who sold it to him, then the seller should be made to restore the price received and be punished like a thief.—If the seller succeeds in proving himself non-guilty (by indicating a lawful source from which he obtained the thing), he shall be let off.—(*Arthashāstra*, 3. 16.)

9. बृहस्पति 13. 7-8.] वणिग्वीथीपरिगतं विज्ञातं राजपूरुषैः ।
अविज्ञाताश्रयात् क्रीतं विक्रेता वा यत्र मृतः ।
स्वामी दत्त्वाऽर्धमूल्यं तु प्रगृह्णीत स्वकं धनम् ॥

9. In a case where the purchaser has bought the chattel in the open market-place, and in the presence of the King's Officer,—but from a person whose habitation is not known to him, or who has since died (and who therefore cannot be produced),—the owner shall pay to him half the price of the goods concerned and recover it.—(Bṛhaspati, 13. 7-8.) [Quoted in *Vivādaratnākara*, p. 109 ; also Marīchi in *Vivādaratnākara*, p. 110 and in *Smṛtichandrikā*, p. 508.]

NOTES

In this case as Bṛhaspati (13. 9) has explained, both parties (the owner and the purchaser) are penalised ;—the former for his neglecting to take due care of his property, and the latter for making a purchase from an unknown person.

Vīramitrodaya (p. 381) remarks that this rule applies to a case where the owner is unable to produce adequate proof of ownership ; if he is able to produce it, he obtains the property without having to pay anything.

WHAT SHOULD BE DONE BY THE PURCHASER

10. कात्यायन] अभियोक्ता धनं कुर्यात् प्रथमं ज्ञातृभिः स्वकम् ।
पश्चादात्मविशुद्ध्यर्थं क्रयं क्रेता स्वबन्धुभिः ॥

10. After the owner has established his ownership over the property, the purchaser, in order to clear himself, should prove the genuineness of his purchase by means of witnesses.—(Kātyāyana in *Smṛtichandrikā*, p. 501 and p. 504, and in *Vivādaratnākara*, p. 106.)

11. कात्यायन] यदा मूलमुपन्यस्य पुनर्वादी क्रयं वदेत् ।
आहरेन्मूलमेवासौ न क्रयेण प्रयोजनम् ॥

11. Having at first named the person from whom he made the purchase, if the purchaser drops that and takes his stand upon the genuineness of his purchase,—no purpose would be served by this latter, and he should strive after producing the vendor.—(Kātyāyana in *Vivādaratnākara*, p. 101 and in *Smṛtichandrikā*, p. 504.)

12. नारद] प्रकाशक्रयतः शुद्धिः क्रेतुः ।

12. The purchaser is cleared by proving that his purchase was open and public.—(Nārada in *Vivādaratnākara*, p. 107.)

13. बृहस्पति 13. 4.] पूर्वस्वामी तु तद्द्रव्यं यदाऽऽगत्य विभावयेत् ।
तत्र मूलं दर्शनीयं क्रेतुः शुद्धिस्ततो भवेत् ॥

13. When the rightful owner turns up and establishes his ownership over the chattel, the purchaser should produce the man from whom he made the purchase; by doing this he becomes cleared.—(Bṛhaspati, 13. 4.) [Quoted in *Smṛtichandrikā*, p. 502 and *Vivādaratnākara*, p. 101.]

14. कात्यायन] प्रकाशं वा क्रयं कुर्यान्मूलं वाऽपि समर्पयेत् ।
मूलानयनकालस्तु देयो योजनसंख्यया ॥

14. The purchaser should either prove that the purchase was open and public or produce the vendor; and for this latter purpose, time should be given to him in proportion to the distance of the place where the vendor may be residing.—(Kātyāyana in *Vivādaratnākara*, p. 101.)

15. कात्यायन] प्रकाशं च क्रयं कुर्यात् साधुभिर्ज्ञातृभिः स्वकैः ॥

15. The open character (*bona fides*) of the purchase is to be proved by means of reliable witnesses.—(Kātyāyana in *Smṛtichandrikā*, p. 504, and in *Vivādaratnākara*, p. 106.)

NOTES

This text is followed by the statement—'in this matter no other evidence either *divine* or *human*, is admissible.' *Smṛtichandrikā* takes this literally and holds that in the case of disputes over 'sales without ownership' no other evidence is admissible except that of witnesses. *Vivādaratnākara* and *Vīramitrodaya* however hold that the other proofs need not be adduced so long as it is possible to adduce witnesses; and in cases where witnesses are not available, recourse must be had to ordeals and other proofs.

16. मनु 8. 201.] विक्रयाद् यो धनं किञ्चिद् गृह्णीयात्कुलसन्निधौ ।
क्रयेण स विशुद्धं हि न्यायतो लभते धनम् ॥

16. If a man obtains a chattel from the market, in the presence of witnesses, he acquires it with a clear title obtained by legal purchase.—(Manu 8. 201.)

NOTES

Medhātithi adds—'If the thing has been purchased from one who is not the rightful owner of it, then the property is restored to the rightful owner and the *bona fide* purchaser obtains the price paid from the person who had sold it to him.'

According to *Vīramitrodaya* (p. 381), this applies to cases where the rightful owner is unable to establish his claim to the disputed thing.

17. मरीचि] वणिग्वीथीपरिगतं विज्ञातं राजपूरुषैः ।
दिवा गृहीतं यत् क्रेत्रा स शुद्धो लभते धनम् ॥

17. If the purchaser has bought the chattel during the day, in the open market, in the presence of the king's officers, he obtains it with a clear title.—(Marīchi in *Smṛtichandrikā*, p. 505 and in *Vivādaratnākara*, p. 110.)

18. नारद] न गूहेदागमं क्रेता शुद्धिरस्य तदागमात् ।
विपर्यये तुल्यदोषः सर्वं तद्दण्डमर्हति ॥

18. The purchaser shall not conceal his title; his clearance depends upon his title; if he does not prove his title, he shares

the guilt and punishment with the vendor who sold the chattel without ownership.—(Nārada in *Vivādaratnākara*, p. 108.)

DUTY OF THE KING—PENALTIES

19. मनु 8. 199.] अस्वामिना कृतो यस्तु दायो विक्रय एव वा ।
अकृतः स तु विज्ञेयः ॥

19. If a sale or gift is made by one who is not the rightful owner of the property concerned, it should be annulled.—(Manu 8. 199.)

20. कात्यायन] अस्वामिविक्रयं दानमाधिं च विनिवर्तयेत् ।

20. Sale, gift or deposit,—made without ownership—should be annulled.—(Kātyāyana in *Smṛtichandrikā*, p. 499 and in *Vivādaratnākara*, p. 104.)

21. व्यास] मूले समाहिते क्रेता नाभियोज्यः कथञ्चन ।
मूलेन सहवादस्तु नाष्टिकस्य तदा भवेत् ॥

21. When the purchaser has produced the vendor, he should not be prosecuted any further; after that the dispute lies between the owner and the vendor.—(Vyāsa in *Smṛtichandrikā*, p. 503.)

22. याज्ञवल्क्य 2. 172.] हृतं प्रणष्टं यो द्रव्यं परहस्तादवाप्नुयात् ।
अनिवेद्य नृपे दण्ड्यः स तु षण्णवतिं पणान् ॥

22. If a man discovers in another person's possession, some chattel of his which had been stolen or lost,—and recovers it from that person without notifying it to the king,—he should be fined 96 *Paṇas*.—(Yājña. 2. 172.)

NOTES

What the owner should do under the circumstances, has been laid down in Sec. 7 above.

23. मनु 8. 202.] अथ मूलमनाहार्यं प्रकाशक्रयशोधितम् ।
अदण्ड्यो मुच्यते राज्ञा नाष्टिको लभते धनम् ॥

23. If the vendor cannot be traced, and the purchaser has cleared himself by proving the *bona fide* character of his purchase, he should be let off without punishment, but the property should be restored to the owner.—(Manu 8. 202.)

24. बृहस्पति 13. 6.] प्रमाणहीनवादे तु पुरुषापेक्षया नृपः ।
समन्यूनाधिकत्वेन स्वयं कुर्यात् विनिर्णयम् ॥

24. In a case where there is no evidence, the King shall take into consideration the character of the parties concerned and decide the case and apportion the chattel between them, equally, or more or less, at his own discretion.—(Bṛhaspati 13. 6 ; in *Smṛtichandrikā*, p. 506 and *Vivādaratnākara*, p. 109.)

NOTES

'*No Evidence.*'—The owner is unable to adduce evidence in proof of his long-established ownership ; and the purchaser is unable either to produce the vendor or to adduce witnesses to prove the *bona fide* character of his purchase ; the king shall test the character of the parties by means of spies, and others, as laid down under 'Deposits' and decide the case on that basis.—(*Vivādaratnākara*, p. 109.)

25. विष्णु 5. 166.] यद्यप्रकाशं हीनमूल्यं वा क्रीणीयात् तदा क्रेता
विक्रेता च चौरवच्छास्यः ॥

25. If a man has sold a thing secretly, and under its price,—then the purchaser and the vendor should be punished like thieves.—(Viṣṇu 5. 166, *Vīramitrodaya*, p. 376.)

26. बृहस्पति 13. 10-11.] येन क्रीतं तु मूल्येन प्रागध्यक्षनिवेदितम् ।
न तत्र विद्यते दोषः स्तेयः स्यादुपधिक्रयात् ॥
अन्तर्गृहे बहिर्ग्रामात् निश्युपांश्वसतो जनात् ।
हीनमूल्यं च यत् क्रीतं ज्ञेयोऽसावुपधिक्रयः ॥

26. When a man has purchased a chattel at a fair price, after having notified it previously to the King's officers, no blame attaches to him ; but he should be dealt with as a thief if the purchase has been effected in an improper manner,—*i.e.*, either within a closed room, or outside the village, or at night, or secretly, or from a wicked person, or at a very low price.—(Bṛhaspati, 13. 10-11 ; in *Vivādaratnākara*, p. 107.)

NOTES

'*Wicked persons*'—according to *Vīramitrodaya* (p. 375), this phrase includes slaves and other persons of that class.

27. नारद] अस्वाम्यनुमताद् दासादसतश्च जनाद्रहः ।
हीनमूल्यमवेलायां क्रीणन् तद्दोषभाग् भवेत् ॥

27. If a man buys a chattel from a slave without the permission of his master, or from a wicked person, or secretly, or at a low price, or at an improper time,—he incurs the guilt of theft.—(Nārada in *Smṛtichandrikā,* p. 501.)

28. याज्ञवल्क्य 2. 168.] हीनाद्रहो हीनमूल्ये वेलाहीने च तस्करः ।

28. By making a purchase either from a poor person, or in secret, or at a very low price, or at an improper time, he should be dealt with as a thief.—(Yājña. 2. 168.)

NOTES

'*Poor person*'—a person for whom it is impossible to have come by the property in any rightful manner.—(*Mitākṣarā.*)

29. बृहस्पति] विक्रेता दर्शितो यत्र हीयते व्यवहारतः ।
क्रेत्रे राज्ञे मूल्यदण्डो प्रदद्यात् स्वामिने धनम् ॥

29. In a case where the vendor has been produced, he becomes cast in the suit; he should pay to the purchaser the price of the commodity sold, and to the king a fine, and he should restore the property to the owner.—(Bṛhaspati 13. 3; in *Smṛtichandrikā,* p. 503.)

30. याज्ञवल्क्य 2. 170.] विक्रेतुर्दर्शनाच्छुद्धिः स्वामी द्रव्यं नृपो दमम् ।
क्रेता मूल्यमवाप्नोति तस्माद् यस्तस्य विक्रयी ॥

30. The purchaser becomes cleared by producing the vendor; the owner recovers the property, the King receives the fine, and the purchaser receives back the price he had paid for the chattel from the person who had sold it.—(Yājña. 2. 170.)

31. नारद] विक्रेता स्वामिनेऽर्थं स्वं क्रेत्रे मूल्यं च तत्कृतम् ।
दद्याद् दण्डं तथा राज्ञे विधिरस्वामिविक्रये ॥

31. In cases of sale without ownership, the seller should restore the chattel to the owner, repay the price he had obtained to the purchaser, and a fine to the King.—(Nārada in *Smṛtichandrikā,* p. 503.)

32. कात्यायन] अनुपस्थापयन्मूलं क्रयं वाऽप्यविशोधयन् ।
यथाभियोगं धनिने धनं दाप्यो दमश्च सः ॥

32. If the purchaser does not produce the vendor, or fails to prove the *bona fide* character of his purchase, he should be made to pay to the owner the amount claimed by him, and also a fine to the king.—(Kātyāyana in *Smṛtichandrikā*, p. 504.)

33. कात्यायन] यदि स्वं नैव कुरुते ज्ञातृभिर्नाष्टिको धनम् ।
प्रसङ्गविनिवृत्त्यर्थं चौरवद्दण्डमर्हति ॥

33. If the owner fails to prove his ownership by means of witnesses and other proofs, he should be punished like a thief with a view to prevent such misbehaviour.—(Kātyāyana in *Smṛtichandrikā*, p. 505.)

34. याज्ञवल्क्य 2. 171.] आगमेनोपभोगेन नष्टं भाव्यमतोऽन्यथा ।
पञ्चबन्धो दमस्तत्र राज्ञे तेनाविभाविते ॥

34. The owner has to establish his ownership by showing title and possession; if he fails to do this, he should be made to pay the fifth part of the amount involved, as fine to the king.—(Yājña. 2. 171.)

NOTES

'*Showing title*'—adducing evidence of his having acquired it in the rightful manner.—(*Vivādaratnākara*, p. 105.) The rightful means of acquiring have been enumerated in "a Smṛti" quoted in *Parāsharamādhava* (p. 313): 'Gift, purchase, reward for bravery, marriage-gift, inheritance from a relative.'

35. व्यास] वादी चेन्मार्गितं द्रव्यं साक्षिभिर्न विभावयेत् ।
दाप्यः स्याद् द्विगुणं दण्डं क्रेता तद्द्रव्यमर्हति ॥

35. If the complainant (owner) fails to establish his ownership of the chattel in dispute, he should be fined double the amount of the value of the chattel; and the chattel should remain with the purchaser.—(Vyāsa in *Vivādaratnākara*, p. 107, and in *Smṛtichandrikā*, p. 505.)

F. 32

NOTES

The discrepancy between the light fine prescribed under 34 and the heavy one prescribed in 35 has been explained by *Vivādaratnākara* (p. 107) by pointing out that the heavy fine is meant for cases where the claim set up is intentionally fraudulent, while the light one is for those where the man is found to have set up the claim under an honest misapprehension.

36. मनु 8.197-198.] विक्रीणीते परस्य स्वं योऽस्वामी स्वाम्यसम्मतः ।
न तं नयेत साक्ष्यं तु स्तेनमस्तेनमानितम् ॥
अवहार्यो भवेच्चैष सान्वयः षट्शतं दमम् ।
निरन्वयोऽनपसरः प्राप्तः स्याच्चौरकिल्विषम् ॥

36. If a man sells another man's property, without being its owner, and without the owner's consent, he does not deserve to be treated like a gentleman; though not actually a thief, he should be regarded as a thief;—if he is related to the rightful owner, he should pay the penalty of six hundred; —if he is not a relative, nor is he one having access to the owner, he shall be dealt with as a thief.—(Manu, 8. 197-198.)

NOTES

In the latter case also, if the man has obtained the chattel from the owner's household, from a member of the family,—and he has received it through folly or ignorance,—or if he has obtained it himself in an open sale,—then he shall be only fined 600, and not punished as a thief.—(*Medhātithi.*)

CHAPTER VIII

JOINT CONCERNS

GENERAL

1. नारद] वणिक्प्रभृतयो यत्र कर्म सम्भूय कुर्वते ।
तत्सम्भूय समुत्थानम् ।

1. When traders and others carry on business jointly, it is called a 'joint concern.'—(Nārada in *Vivādaratnākara*, p. 111.)

2. बृहस्पति 14.1-2.] कुलीनदक्षानलसैः प्राज्ञैर्नाणकवेदिभिः ।
आयव्ययज्ञैः शुचिभिः शूरैः कुर्यात्सहक्रियाः ॥
अशक्तालसरोगार्तमन्दभाग्यनिराश्रयैः ।
वाणिज्याद्याः सहैतैस्तु न कर्तव्या बुधैः क्रियाः ॥

2. A man shall carry on business with such persons as are of noble parentage, clever, active, intelligent, conversant with coins, expert in income and expenditure, honest and brave;—and never with such as are incompetent, indolent, diseased, unlucky or destitute.—(Bṛhaspati, 14. 1-2 ; in *Vivādaratnākara*, p. 111 ; *Smṛtichandrikā*, p. 429 ; *Vīramitrodaya*, p. 384.)

NOTES

'*Business*'—such as Trade, Agriculture, Art, Sacrifices, Music, Robbery.—(*Smṛtichandrikā*, p. 429.)

'*Destitute*'—*i. e.*, without capital.—(*Vīramitrodaya*, p. 384.)

3. कात्यायन] वणिजां कर्षकाणां च चौराणां शिल्पिनां तथा ।
अनियम्यांशकर्तॄणां सर्वेषामेव निर्णयः ॥

3. Though all co-sharers in business—such as traders, agriculturists, thieves and artisans,—are ordinarily entitled to equal shares in the profit or loss of a joint concern, yet special rules become necessary for cases in which the corporation is formed without any such explicit understanding.—(Kātyāyana in *Smṛtichandrikā*, p. 441.)

CORPORATION OF TRADESMEN

4. नारद 3. 2.] फलहेतोरुपायेन कर्म सम्भूय कुर्वताम् ।
आधारभूतः प्रक्षेपः उत्तिष्ठेरंस्ततोंशतः ॥

4. When several partners are jointly carrying on business for the purpose of making profits, the supplying of capital forms the basis of such business; each should therefore contribute his proper share towards the capital.—(Nārada, 3. 2.) [Quoted in *Vivādaratnākara*, p. 111.]

5. नारद 3. 3.] समोऽतिरिक्तो हीनो वा तत्रांशो यस्य यादृशः ।
क्षयव्ययौ तथा वृद्धिस्तस्य तत्र तथाविधा ॥

5. The expenses, the loss and the profit of all the partners are either equal or more or less, in accordance with the share of capital contributed by each.—(Nārada, 3·3.) [Quoted in *Vivādaratnākara*, p. 111.]

6. बृहस्पति 14. 3.] समोन्यूनोऽधिको वांशो येन क्षिप्तस्तथैव सः ।
व्ययं दद्यात् कर्म कुर्यात् लाभं गृह्णीत चैव हि ॥

6. As an equal, larger or smaller share of the capital has been contributed by a partner, in the same proportion shall he pay the expenses, do the work and take the profit.—(Bṛhaspati, 14.3; in *Vivādaratnākara*, p. 112 and *Smṛtichandrikā*, p. 430.)

7. बृहस्पति 14. 4.] प्रयोगं कुर्वते ये तु हेमधान्यरसादिना ।
समन्यूनाधिकैरंशैर्लाभस्तेषां तथाविधः ॥

7. In the case of persons investing gold, grains, liquids or other things, the profit of the partners shall be in accordance with the share of capital contributed by each.—(Bṛhaspati, 14. 4.) [Quoted in *Smṛtichandrikā*, p. 430.]

8. याज्ञवल्क्य 2. 259.] समवायेन वणिजां लाभार्थं कर्म कुर्वताम् ।
लाभालाभौ यथाद्रव्यं यथा वा संविदा कृतौ ॥

8. When a number of tradesmen carry on business jointly for the purpose of making profit, the profit or loss of each shall be either in proportion to the share of capital contributed by each, or as has been agreed upon among themselves.—(Yājña. 2. 259.)

NOTES

Business is said to be 'carried on jointly' when there is an agreement among a number of tradesmen to the effect that they would carry it on as a joint concern. Tradesmen and others have recourse to this method of doing business, for the purpose of making larger profits than they could make, each on his account.—The profit and loss of each of these partners are to be determined by the share of the capital contributed by each of them. Or when starting the business they may have entered upon an agreement to some such effect as 'A shall be the predominant partner and shall receive half of the profits and the other half shall be divided equally between B and C' and so forth.—(*Mitākṣarā.*)

9. व्यास] समक्षमसमक्षं वाऽवञ्चयन्तः परस्परम् ।
नानापण्यानुसारात्ते प्रकुर्युः क्रयविक्रयौ ।
अगोपयन्तो भाण्डानि शुल्कं दद्युश्च तेऽध्वनि ॥

9. When a number of tradesmen have formed a joint concern, they should carry on sales and purchases after due consideration of the nature of the merchandise, either in the presence or in the absence of one another, without any deception, nor concealing the commodities, and paying all the duties on the road.—(Vyāsa in *Smṛtichandrikā*, p. 431.)

10. नारद 3. 4.] भाण्डपिण्डव्ययोद्धारभारसारान्ववेक्षणम् ।
कुर्युस्तेऽव्यभिचारेण समये स्वे व्यवस्थिताः ॥

10. The expenses incurred in the purchase of merchandise and the food on the journey, in defraying the toll-charges, the freights, and the expenses of keeping watch and ward over the valuable commodities,—all these shall be duly defrayed by the partners in accordance with the terms of their agreement.—(Nārada, 3.4.) [Quoted in *Vivādaratnākara*, p. 112 and *Smṛtichandrikā*, p. 431.]

11. बृहस्पति 14. 5.] बहूनां सम्मतो यस्तु दद्यादेको धनं रहः ।
करणं कारयेद्वापि सर्वैरेव कृतं भवेत् ॥

11. If any one of the partners has been so authorised by several partners, whatever property he may give or lend, and whatever written contract he may enter into,—shall be

regarded as having been done by all the partners.—(Bṛhaspati, 14. 5.; in *Smṛtichandrikā,* p. 431.)

12. बृहस्पति 14. 9.] परीक्षकाः साक्षिणश्च त एवोक्ताः परस्परम् ।
सन्दिग्धेऽर्थे वञ्चनायां नोचेद्विद्वेषसंयुताः ॥

12. Partners in a joint concern shall be their own auditors and witnesses in all cases of dispute or cheating,—if there is no previous enmity among them.— (Bṛhaspati, 14. 6; in *Smṛtichandrikā,* p. 432.)

13. बृहस्पति] यः कश्चिद्वञ्चकस्तेषां विज्ञातः क्रयविक्रये ।
शपथैः स विशोध्यः स्यात् सर्ववादेष्वयं विधिः ॥

13. When any one among the partners is found to have practised deceit in purchasing or selling, he should be cleared by oaths (ordeals);—this same rule should be followed in all disputes.—(Bṛhaspati in *Smṛtichandrikā,* p. 432.)

14. याज्ञवल्क्य 2. 265.] जिह्मं त्यजेयुर्निर्लाभम् ।

14. If any one of them is found to be crooked, the other partners should turn him out, depriving him of any profits that he may have earned.—(Yājña. 2. 265.)

NOTES

'*Crooked,*'—*e.g.*, secretly carring on business on his own individual account.—(*Aparārka.*)—'*Depriving him, etc.,*'—*i.e*, repaying to him only his share of the capital.—(*Vivādaratnākara,* p. 115.)

15. याज्ञवल्क्य 2.265.] अशक्तोऽन्येन कारयेत् ।

15. If any of the partners is honestly unable to do his share of work in the concern, he should have it done by someone else as his substitute.—(Yājña. 2. 265.)

NOTES

'*Work*'—such as looking after the stores, examining the accounts and so forth.—(*Mitākṣarā.*)

16. बृहस्पति 14. 8.] चयह्रानिर्यदा तत्र दैवराजकृता भवेत् ।
सर्वेषामेव सा प्रोक्ता कल्पनीया यथांशतः ॥

16. When any loss or diminution has occurred through the act of God or king, it should be borne by all the partners in proportion to their respective shares.—(Bṛhaspati, 14. 8; in *Smṛtichandrikā*, p. 432; *Vivādaratnākara*, p. 113.)

NOTES

'*Loss*'—of profit;—'*diminution*'—in the capital.—(*Vivādaratnākara*, p. 113.)

17. बृहस्पति 14. 9.] अनिर्दिष्टो वार्यमाणः प्रमादाद्यस्तु नाशयेत् ।
तेनैव तद्भवेद्देयं सर्वेषां समवायिनाम् ॥

17. When any one partner, acting without the assent of other partners, or against their express instructions, injures the joint property, through negligence,—that loss has to be made good to all the partners by that same man.—(Bṛhaspati, 14. 9; in *Smṛtichandrikā*, p. 432; *Vivādaratnākara*, p. 113.)

NOTES

'*Negligence*'—stands for stupidity, cupidity, anger, and so forth.—(*Smṛtichandrikā*, p. 432.)

18. नारद 3. 5.] प्रमादान्नाशितं दाप्यः प्रतिषिद्धकृतं च यत् ।
असन्दिष्टं तु यः कुर्यात् सर्वैः सम्भूयकारिभिः ॥

18. Each partner is responsible for any loss incurred through his want of care, or through his acting against the instructions of, or without authorisation from, all the other partners.—(Nārada, 3.5; in *Vivādaratnākara*, p. 114.)

19. याज्ञवल्क्य 2. 265.] प्रतिषिद्धमनादिष्टं प्रमादाद्यच्च नाशितम् ।
स तद्दद्यात् ।

19. When a loss has been caused by any one partner having acted through negligence, against the instructions of other partners, or without their assent,—he should make it good.—(Yājña. 2. 265.)

NOTES

The partners have told the man *not* to deal with a commodity in a certain manner,—and he does exactly what he has been told not to do ;—or when he does something without the consent of the other partners ;—or when he does not take sufficient care of the business ;—if for any one of these reasons, the property of the corporation suffers injury, the man responsible for it should make that loss good.—(*Mitākṣarā.*)

20. याज्ञवल्क्य 22. 65.] विप्लवाद्रक्षिताद् दशमांशभाक् ।

20. If a partner has saved the merchandise from dangers (due to the king or to robbers and (so forth),—he should receive the tenth part of that merchandise as his reward.—(Yājña. 2. 265.)

21. बृहस्पति] राजदैवभयाद् यस्तु स्वशक्त्या परिपालयेत् ।
तस्यांशं दशमं दत्वा गृह्णीयुस्तेंशतोऽपरम् ॥

21. That partner who, by his own efforts, saves the merchandise from dangers due to the act of God or of the king, shall receive the tenth part of that merchandise ; the remainder being distributed among the other partners according to their respective shares.—(Bṛhaspati, 14.10 ; in *Vivādaratnākara*, p. 114.)

22. कात्यायन] चौरतः सलिलादग्नेर्द्रव्यं यस्तु समाहरेत् ।
तस्यांशो दशमो देयः सर्वद्रव्येष्वयं विधिः ॥

22. If a partner has saved a commodity from thieves, or from floods, or from fire, he should receive its tenth part ; this rule applies to all commodities.—(Kātyāyana in *Smṛtichandrikā*, p. 433 and in *Vivādaratnākara*, p. 114.)

23. बृहस्पति 14. 19.] समवेतैस्तु यद्दत्तं प्रार्थनीयं तथैव तत् ।
न याचते च यः कश्चित् लाभात् स परिहीयते ॥

23. That which has been lent by several persons conjointly should be demanded also by them conjointly ; any such lender who fails to demand the loan together with his partners,—or otherwise to co-operate with them in the carrying on of the business,—shall forfeit his share of the profit —(Bṛhaspati, 14. 19.) [Quoted in *Vivādaratnākara*, p. 123.]

24. नारद 3. 7.] एकस्य चेत् स्यान्मरणं दायादोऽस्य तदाप्नुयात् ।
अन्यो वाऽसति दायादे शक्तश्चेत् सर्व एव च ॥

24. If any one partner should happen to die, his heir shall receive his share ; or if he has no heir, it shall go to some other partner who may be able to do the dead partner's part of the work ;—or to all the other partners who may do that work.—(Nārada, 3.7; in *Vivādaratnākara*, p. 115.)

NOTES

In the place of 'death,' '*maraṇam*'—which is the reading adopted by *Aparārka* and *Mitākṣarā* and also by *Asahāya*—some texts read '*vyasanam*,' 'accident.'

25. नारद 3. 16-18.] कश्चिच्चेत् सञ्चरन् देशात् प्रेयादभ्यागतो वणिक् ।
राजाऽस्य भाण्डं तद्रक्षेत् यावद् दायाददर्शनम् ॥
दायादेऽसति बन्धुभ्यो ज्ञातिभ्योऽपि तदर्पयेत् ।
तदभावे सुगुप्तन्तु धारयेद् दश वत्सरान् ॥
अस्वामिकमदायादं दशवर्षस्थितं ततः ।
राजा तदात्मसात्कुर्यात् ॥

25. If a travelling tradesman returning to his country should happen to die, the king has to keep his goods till his heirs turn up.—If there are no heirs, the king shall deliver the property to his relatives or connexions. On failure of these, the king shall keep it well-guarded for a period of ten years. When such property without an owner, which is not claimed by an heir, has been preserved for ten years, the king may keep it for himself.—(Nārada, 3.16—18.) [Quoted in *Vivāda-ratnākara*, pp. 115, 116, 117.]

NOTES

The first claim is that of the *bandhūs*, 'relatives' (relations on the mother's side, according to *Mitākṣarā* ;—'wife, daughter and other relations,' according to *Aparārka* ;—after that come the '*jñātis*' ('Sapiṇḍas or relations on the father's side,' according to *Mitākṣarā*; '*Samānodakas*,' according to *Aparārka*).—In the absence of the '*bandhu*' and the '*jñāti*,' the property should go to the maternal uncle and such others—says *Halāyudha*, according to whom '*bandhu*,' and '*jñāti*' stand for all near relations except the direct heirs.

26. बृहस्पति 14. 11-14.] यदा तत्र वणिक् कश्चित् प्रमीयेत प्रमादतः ।
तस्य भाण्डं दर्शनीयं नियुक्तैराजपूरुषैः ॥
यदा कश्चित् समागच्छेत् तस्य रिक्थहरो नरः ।
स्वाम्यं विभावयेदन्यैः स तदा लब्धुमर्हति ॥
राजाऽऽददीत षड्भागं नवमं द्वादशं तथा ।
शूद्रविट्क्षत्रजातीनां विप्राद् गृह्णीत विंशकम् ॥
त्र्यब्दादूर्ध्वं तु नागच्छेद् यत्र स्वामी कथञ्चन ।
तदा गृह्णीत तद् राजा ब्रह्मस्वं ब्राह्मणान् श्रयेत् ॥

26. If a partner happen to die through an accident, his goods must be looked after by the king's officers appointed for the purpose;–when anyone comes forward claiming to be the dead man's heir, he should prove his claim by the evidence of other men, and then receive the goods.—Out of the property of a Sūdra, a Vaishya or a Kṣattriya, the king shall take respectively the sixth, the ninth and the twelfth part; and the twentieth part from the property of the Brāhmaṇa.—After the lapse of three years, if no claimant should turn up, the king shall take that property ; the property of the Brāhmaṇa he shall bestow upon other Brāhmaṇas.—(Bṛhaspati, 14. 11—14 ; in *Vivādaratnākara*, p. 116.)

27. बौधायन] अब्राह्मणस्य प्रणष्टस्वामिकं रिक्थं संवत्सरं परिपाल्य राजा हरेत् ॥

27. The property belonging to a lost non-Brāhmaṇa, the king shall keep for a year and then take it.—(Baudhāyana in *Vivādaratnākara*, p. 117.)

28. याज्ञवल्क्य 2. 264.] देशान्तरगते प्रेते धनं दायाद्बान्धवाः ।
ज्ञातयो वा हरेयुस्तदागतास्तैर्विना नृपः ॥

28. If a partner happen to die in a foreign country, the goods shall be taken by his heirs or *bandhus*. or *jñātis*, or his partners in business who may turn up,—and failing all these, by the king.—(Yājña. 2. 264.)

NOTES

(1) *'Heirs'*—the sons and other children (*Mitākṣarā*),—*'Sons'* (*Aparārka*).—(2) *'Bandhus'* —the maternal uncle and other relations on the mother's side (*Mitākṣarā*),—wife, daughter and other relations (*Aparārka*).—(3) *'Jñātis,'*—

Sapindas other than children (*Mitā.*),—*Samānodakas* (*Aparārka*).—(4) '*Āgatāḥ*,' other partners in the business who may have arrived.—(5) Failing all, the king. The order of precedence among these claimants shall be the same as that laid down in the chapter on *Inheritance*. The enumeration in the present text is for the purpose of excluding, from the present context, the pupil, the fellow-student and others, and including the *tradesmen* in the capacity of *partner*. Among tradesmen also, the goods should go to one who is in a position to offer the funeral oblations to the dead man and to pay his debts; if all the partner-tradesmen are equally so able, then the goods should be divided equally among them.—(*Mitākṣarā*.)

AGRICULTURISTS

29. बृहस्पति 14. 21.] बाह्यकर्षकबीजाद्यैः क्षेत्रोपकरणेन च।
ये समानास्तु तैः सार्धं कृषिः कार्या विजानता॥

29. Agriculture should be undertaken by a sensible man, jointly with those who are his equals, in point of possessing cattle, labourers, seeds, and the implements of husbandry. —(Bṛhaspati, 14. 21; in *Smṛtichandrikā*, p. 434.)

30. बृहस्पति 14. 24.] कृशातिवृद्धं क्षुद्रं च रोगिणं प्रपलायिनम्।
काणं खञ्जं च नादद्याद् बाह्यं प्राज्ञः कृषीवलः॥

30. A sensible agriculturist should not admit such cattle as is lean, very old, poor, diseased, apt to run away, one-eyed or lame.—(Bṛhaspati, 14. 24; in *Smṛtichandrikā*, p. 434.)

31. बृहस्पति 14. 22.] पर्वते नगराभ्याशे तथा राजपथस्य च।
ऊषरं मूषिकाव्याप्तं क्षेत्रं यत्नेन वर्जयेत्॥

31. The agriculturist should refrain from cultivating land on a hill or, land adjacent to a town, or to the king's highway, barren soil, or land infested by mice.—(Bṛhaspati, 14. 22; in *Smṛtichandrikā*, p. 434.)

32. बृहस्पति 14. 25.] बाह्यबीजात्ययाद् यस्य क्षेत्रहानिः प्रजायते।
तेनैव सा प्रदातव्या सर्वेषां कृषिजीविनाम्॥

32. When loss happens in the produce of a field, by reason of the deficiency of one partner in regard to cattle or seeds,—

it should be made good to all the partners by that partner.—(Bṛhaspati, 14. 25 ; in *Smṛtichandrikā*, p. 425.)

NOTES

'*Cattle or seeds*'—include other agricultural implements also—says *Smṛtichandrikā*, p. 435.

The *Arthashāstra* (3. 14) has the following rules on this subject :—

(*a*) If a number of persons carry on a work as one corporate body, the wages obtained by them shall be divided equally among the members.

(*b*) Among a body of agricultural labourers working jointly—if any one happens to fall ill during the time intervening between the beginning of the agricultural operations and the reaping of the harvest,—he shall be paid according to the work actually done by him.—Similarly among a number of tradesmen acting jointly, if any one should happen to be disabled during the time intervening between the buying and disposal of the merchandise.—In either case if the sick member presents himself for working, he shall receive his full share.

(*c*) If, after the commencement of the joint work, any member should desert the corporate body, he should be fined 12 *paṇas*.

(*d*) Among joint workers, if any one should fall ill, the other members shall do his part of the work for ten days.

ARTISANS

33. बृहस्पति 14. 27.] हिरण्यकुप्यसूत्राणां काष्ठपाषाणचर्मणाम् ।
संस्कर्ता च कलाभिज्ञः शिल्पी प्रोक्तो मनीषिभिः ॥

33. That person is called by the wise, 'an artisan' who knowing the art, is able to work up gold or other metals, thread, wood, stone or leather.—(Bṛhaspati, 14. 27 ; in *Smṛtichandrikā*, p. 435.)

34. बृहस्पति 14. 28.] हेमकारादयो यत्र शिल्पं सम्भूय कुर्वते ।
कर्मानुरूपं निर्वेशं लभेरंस्ते यथांशतः ॥

34. When goldsmiths and other artisans carry on their work jointly, they shall share the remuneration in due proportion to the work done by each.—(Bṛhaspati 14. 28 ; *Smṛtichandrikā*, p. 439.)

35. कात्ययान] शिक्षकाभिज्ञकुशला आचार्यश्चेति शिल्पिनः ।
एकद्वित्रिचतुर्भागान् हरेयुस्ते यथोत्तरम् ॥

35. There are four grades among artisans : (1) the man under training, (2) the trained man, (3) the expert, and (4) the master-artisan ; they shall receive one, two, three and four parts respectively of the remuneration received for the work done.—(Kātyāyana in *Smṛtichandrikā*, p. 435.)

NOTES

'*Master*'—one who is capable of making new designs.

36. बृहस्पति 14. 29.] हर्म्यं देवगृहं चापि चार्मिकोपस्करािण च ।
सम्भूय कुर्वतां चैषां प्रमुखो ह्यंशमर्हति ॥

36. When a number of artisans are jointly building a house or temple, or digging a tank, or manufacturing articles of leather, the headman among them is entitled to a double share in the remuneration.—(Bṛhaspati, 14. 29 ; in *Smṛtichandrikk*, p. 436.)

SACRIFICIAL PRIESTS

37. मनु ?] ऋत्विजः समवेतास्तु यथा सत्रे निमन्त्रिताः ।
कुर्युर्यथार्हतः कर्म गृह्णीयुर्दक्षिणां तथा ॥

37. When a number of priests have been invited to officiate at a sacrifice, each will do the work assigned to him and receive the fee accordingly.—(Attributed to Manu, in *Smṛtichandrikā*, p. 436.)

38. मनु 8. 210.] सर्वेषामर्धिनो मुख्याः तदर्धेनार्धिनोऽपरे ।
तृतीयिनस्तृतीयांशाः चतुर्थांशाश्च पादिनः ॥

38. Among a number of priests officiating at a sacrifice, the chief men shall receive half of the fee ; those belonging to the second grade shall receive half of that ; those of the third grade, the third part of that ; and those of the fourth grade, the fourth part.—(Manu, 8. 210.)

39. मनु 8. 208-209.] यस्मिन् कर्मणि यास्तु स्युरुक्ताः प्रत्यङ्गदक्षिणाः ।
स एव ता आददीत भजेरन् सर्व एव वा ॥
रथं हरेत चाध्वर्युः ब्रह्माधाने च वाजिनम् ।
होता वापि हरेदश्वमुद्गाता चाप्यनः क्रये ॥

39. Where specific fees have been prescribed for particular parts of the sacrifice, the priest who performs the particular part shall receive the fee specifically prescribed for that part: thus it is that at the Fire-laying Rite, the Adhvaryu receives the chariot; and at the Soma-purchase Rite the Brahman or the Hoṭr shall receive the horse and the Udgātri, the cart.—(Manu, 8. 208-209.)

NOTES

Apart from the fee specifically assigned to the several priests,—the fee received for the whole body of priests in common shall be divided equally among them.—(*Arthashāstra,* 3. 14.)

40. मनु 8. 206.] ऋत्विग् यदि वृतो यज्ञे स्वकर्म परिहापयेत् ।
तस्य कर्मानुरूपेण देयोंऽशः सह कर्तृभिः ॥

40. If a priest appointed to officiate at a sacrifice abandons his work, his associates shall pay him out of the fee only such share as may be in keeping with the work actually done by him.—(Manu, 8. 206.)

41. मनु 8. 207.] दक्षिणासु च दत्तासु स्वकर्म परिहापयन् ।
कृत्स्नमेव लभेतांशमन्येनैव च कारयेत् ॥

41. If a priest abandons his work after the fees have been paid, he should receive his full share; the work left unfinished should be got done by another.—(Manu, 8. 207.)

42. नारद 3 .8.] ऋत्विजां व्यसनेऽप्येवमन्यस्तत् कर्म निस्तरेत् ।
लभेत दक्षिणाभागं स तस्मात् सम्प्रकल्पितम् ॥

42. When an officiating priest has met with an accident, another priest shall do his work for him and receive from him that portion of the fee which may be commensurate with the work done by him.—(Nārada, 3. 8 ; in *Smṛtichandrikā*, p. 439.)

43. बृहस्पति 14. 15.] एवं क्रियाप्रवृत्तानां यदा कश्चिद् विपद्यते ।
तद्बन्धुना क्रिया कार्या सर्वैर्वा सहकारिभिः ॥

43. From among a number of persons performing an act jointly, if any one should meet with an accident, his part of the work shall be done by a kinsman of his, or by all his associates.—(Bṛhaspati, 14.15 ; in *Smṛtichandrikā*, p. 439.)

44. शङ्खलिखित] तत्र चेदनुप्राप्ते सवने ऋत्विङ्म्रियेत...तस्य सगोत्रः शिष्यो वा तत् कार्यमनुपूरयेत् । अथ चेद्बान्धवः ततोऽन्य-मृत्विजं वृणुयात् ।

44. If in course of the sacrificial performance, an officiating priest should happen to die, his work shall be completed by a person belonging to his *Gotra*, or by his pupil. If the man has no kinsmen, another priest shall be appointed. (Shaṅkha-Likhita, in *Vivādaratnākara*, p. 117 ; and in *Smṛtichandrikā*, p. 439.)

45. 8. 388.] ऋत्विजं यस्त्यजेद्याज्यो याज्यं चर्त्विक् त्यजेद्यदि ।
शक्तं कर्मण्यदुष्टं च तयोर्दण्डः शतं शतम् ॥

45. If a sacrificer forsakes an officiating priest, and if an officiating priest forsakes a sacrificer,—each being capable of doing the work and free from disqualifications,—their punishment shall be 100 each.—(Manu, 8. 388.)

NOTES

Before the completion of the sacrifice, if the sacrificer forsakes the Priest, or the Priest forsakes the sacrificer,—the forsaker shall be fined 250 *Paṇas*.—(*Arthashāstra*, 3. 15.)

MUSICIANS, ACTORS, ETC.

46. बृहस्पति 14. 30.] नर्तकानामेष एव धर्मः सद्भिरुदाहृतः ।
तालज्ञो लभतेऽध्यर्धं गायनास्तु समांशिनः ॥

46. The rules laid down in connection with the corporation of artisans are applicable also to that of dancers and musicians. The man who knows how to keep time shall take a share and a half, and the singers shall take equal shares.—(Bṛhaspati, 14. 30 ; *Vivādaratnākara*, p. 125.)

NOTES

The rule referred to is section 31 above—that the chief man shall receive a double share.

ROBBERS

47. बृहस्पति14. 31. 32.] परराष्ट्राद् धनं यत् स्याच्चौरैः स्वाम्याज्ञया हृतम् ।
कात्यायन] राज्ञे षष्ठांश (v.l. दशांश) मुद्धृत्य विभजेरन् यथाविधि ॥
चौराणां मुख्यभूतस्तु चतुरोंशांस्ततो हरेत् ।
शूरोंशांस्त्रीन् समर्थो द्वौ शिष्टास्त्वेकैकमेव तु ॥

47. When some property has been brought from a hostile country by robbers, with the permission of their leader, they shall hand over a sixth (v.l. tenth) part of it to the king and share the remainder among themselves in due proportion: Four shares shall go to the leader; one who has proved himself specially brave shall receive three shares; one who has proved himself specially efficient shall receive two shares; the rest shall receive a share each.—(Bṛhaspati, 14. 31-32; also Kātyāyana in *Vivādaratnākara*, pp. 125-126: in *Smṛtichandrikā*, p. 440.)

NOTES

Kātyāyana makes the 'tenth part' payable to the king.

48. कात्यायन] तेषां च प्रसृतानां यो ग्रहणं समवाप्नुयात् ।
तन्मोक्षणार्थं यद् दत्तं तस्य कार्या समा क्रिया ॥

48. If, in the course of their operations, an associate happen to be captured, the amount that may have had to be paid for his release shall be paid by all the associates in due proportion.—(Kātyāyana in *Vivādaratnākara*, p. 126; and in *Smṛtichandrikā*, p. 441.)

CHAPTER IX

RESUMPTION OF GIFTS

DEFINITION

1. नारद 4. 1.] दत्त्वा द्रव्यमसम्यग् यत् पुनरादातुमिच्छति ।
दत्ताप्रदानिकं नाम तत् ॥

1. A gift having been made in an improper manner, if the donor wishes to resume it, it is called *Resumption of Gift*.—(Nārada, 4.1 ; in *Vivādachintāmaṇi*, p. 55.)

NOTES

The gift may be regarded as 'improper,' either—(1) when what has been given is a thing that should not be given, or (2) when the thing has been given in an improper manner, or (3) when it has been given to the wrong man, or (4) when it has been given by one without the consent of his father and other relatives, or (5) when the donor himself is too old and senile.—(*Vivādachintāmaṇi*, p. 55).

Cases of not handing over what has been given are to be treated like cases of non-payment of debts.—(*Arthashāstra*, 3. 16.)

THINGS THAT SHOULD NOT BE GIVEN.

2. बृहस्पति 15. 2.] सामान्यं पुत्रदाराधिसर्वस्वन्यासयाचितम् ।
प्रतिश्रुतं तथाऽन्यस्य न देयं त्वष्टधा स्मृतम् ॥

2. (1) Common property, (2) son, (3) wife, (4) pledge, (5) entire property, (6) deposit, (7) what has been borrowed for a special occasion, (8) what has been promised to another person ;—these are the eight kinds of things that should not be given.—(Bṛhaspati, 15.2.)

NOTES

'*Common property*';—according to *Smṛtichandrikā* (p. 442) this term stands for *public* property, *i.e.*, roads, paths and so forth.—But *Vivādaratnākara* (p. 126) takes it in the sense of 'property belonging to more than one person,' *i.e.*, *joint property*.

'*What has been promised*'—Though mere promise is not enough to transfer the ownership, yet what has been even promised to one should not be given to another.—(*Smṛtichandrikā*, p. 442.)

'*Entire property*'—The prohibition of the giving away of one's entire property refers to the person who has sons and grandsons living jointly with him; hence, is not applicable to a man who, either has no offspring, or has already made over to his offsprings their share of the inheritance; such a person may give away his entire property.—(*Smṛtichandrikā*, p. 442.)

The giving away of these things has been forbidden,—(1) in the case of *common property*, on the ground of equity;—(2) in the case of the unwilling *son* and *wife*, on the basis of such express prohibitions as that by Kātyāyana, (below Sec. 6);—(3) in the case of the *entire property*, of one who has offsprings, on the basis of express texts (Nārada, 4. 4-5);—(4) in the case of the *son*, also on the basis of texts (Yājña. 2. 175);—(5) in the case of *deposits*, *pledges* and *borrowed* things, on the ground that the man has no ownership over them. According to *Smṛtisāra*, however, the gift of one's entire property is quite valid, because the man's ownership over it is absolute; all that the prohibition means is that the man making the gift would incur sin, not that the gift would be invalid —(*Vivādachintāmaṇi*, p. 55.)

Mitākṣarā (p. 611) makes it clear that for making gifts out of ancestral property, only the consent of the sons is needed.

3. याज्ञवल्क्य 2. 175.] (a) स्वं कुटुम्बाविरोधेन देयं दारसुतादृते।
(b) नान्वये सति सर्वस्वम् (c) यच्चान्यस्मै प्रतिश्रुतम् ॥

3. (*a*) With the exception of the son and the wife, one's property may be given away, in so far as is commensurate with the interests of the family; (*b*) the entire property should not be given away, if there is progeny; (*c*) what has been promised to one should not be given to another.—(Yājña. 2. 175.)

NOTES

(*a*) One can give away one's property, to such an extent as may not interfere with the food and clothing of one's family;—(*b*) if one has progeny, the entire property shall not be given away; this refers to cases where the sons and grandsons are all living together in a joint family; if they have become separated with their shares in the property, then the father can give away the entire property.—(*Aparārka.*)

(*a*) A man may give away his property,—but not his son or wife;—(*b*) so long as he has sons and grandsons, he shall not give away his entire property;—(*c*) the money and other things that he may have promised to one man shall not be given to another man.—There are three exceptions here: (1) son and wife, (2) what is required for the needs of the family, and (3) what is not absolutely one's own.—(*Mitākṣarā.*)

The prohibition of the giving of the *son* refers to cases where the man has only one son (see next section).—(*Smṛtichandrikā*, p. 445, and, *Parāsharamādhava*, p. 225.)

4. वसिष्ठ] नत्वेकं पुत्रं दद्यात् प्रतिगृह्णीयाद्वा ।

4. If a man has only one son, he shall not give him away; nor shall a man accept the gift of an only son.—(Vashiṣṭha in *Smṛtichandrikā*, p. 445.)

NOTES

Even though the son may consent, an only one son should not be given away.—(*Vivādachintāmaṇi*, p. 56.)

5. कात्यायन] विक्रयं चैव दानं च न नेयाः स्युरनिच्छवः ।
दाराः पुत्रश्च सर्वस्वम्, आत्मन्येव तु योजयेत् ॥

5. The son and the wife, if unwilling, shall not be made objects of sale or gift; so also one's entire property; these the man shall retain with himself.—(Kātyāyana in *Smṛtichandrikā*, p. 445 and in *Vivādachintāmaṇi*, p. 56.)

NOTES

If the son and the wife consent, they may be given away or sold; but in the event of (1) the son, (2) the wife, and (3) the progeny not consenting, (1) the son, (2) the wife, and (3) the entire property shall be retained by the man for himself, and not given away; such is the meaning.—(*Vivādachintāmaṇi*, p. 56.)

This rule is meant for normal circumstances; under abnormal circumstances, in times of distress, all these may be given away, as declared by Kātyāyana (see below 21).

This rule forbids the giving away of the wife and the son at all times, even in times of distress,—as also the giving away of the entire property when there is progeny; and what the other text of Kātyāyana ('They may be sold in times of distress, etc.') means is that in times of distress the son and the wife may be given after their consent has been obtained, and the entire property also may be given away after the consent of the progeny has been obtained; but there shall be no giving away of the unwilling son or wife, or of the entire property without the consent of the progeny.—So that there is no inconsistency between the two texts.—(*Vivādaratnākara*, p. 128; also *Vivādachintāmaṇi*, p. 56.)

6. बृहस्पति 15. 7.] विभक्ता अविभक्ता वा दायादाः स्थावरे समाः ।
एको ह्यनीशः सर्वत्र दानाधमनविक्रये ॥

6. Divided or undivided, all co-heirs are equally entitled to the immovable property; no single parcener has the power to give away, pledge or sell the entire property.—(Bṛhaspati, 15. 7; in *Smṛtichandrikā*, p. 447.)

NOTES

This refers to undivided inmovable property. The sense is that when 'even divided co-parceners have equal claims, what to say of those who are not divided?'

Even a single co-parcener however may do these, in times of distress. (See below, from Kātyāyana.)

7. गौतम] प्रतिश्रुत्याप्यधर्मसंयुक्ताय न दद्यात् ।

7. Even when one has promised a gift, one should not give it to a person beset with unrighteousness.—(Gautama in *Vivādaratnākara*, p. 133.)

NOTES

The '*unrighteousness*' meant is such as makes the man unfit to receive gifts.—(*Vivādaratnākara*, p. 133.)

The Arthashāstra has the following:—

(*a*) The entire property, the son, the wife and one's own self,—after having given away any of these, if the man repent of it, it may be returned to him.

(*b*) If a religious gift has been made to an undeserving person, it may be resumed.—A friendly gift, if made to an evil-doer, may be resumed.—A gift for some purpose, if made to an undeserving person, may be resumed.—(*Arthashāstra*, 3. 16.)

8. नारद 4. 4-5.] अन्वाहितं याचितकमाधिः साधारणं च यत् ।
निक्षेपः पुत्रदारं च सर्वस्वं चान्वये सति ॥
आपत्स्वपि हि कष्टासु वर्त्तमानेन देहिना ।
अदेयान्याहुराचार्या यच्चान्यस्मै प्रतिश्रुतम् ॥

8. A deposit open or sealed, an article borrowed for a special occasion, a pledge, common property, son, wife, and the entire property when there is progeny, and what has been

promised to another,—these the teachers have declared to be such as should not be given away even when one is in distress.—(Nārada, 4. 4-5; in *Vivādaratnākara*, p. 127; *Vivādachintāmaṇi*, p. 56.)

NOTES

What is meant by the deposit being such as should not be given away is that it should not be given *except as a deposit*,— a deposit may be given to another *as a deposit*. (See 18 below.) The prohibition regarding the *son* refers to cases where there is only one son.—(*Smṛtichandrikā*, p. 443.)

Even in times of distress, (1) the son, (2) the wife and (3) the entire property should not be given away without the consent of (1) the son, (2) the wife and (3) the offspring.—(*Vivādachintāmaṇi*, p. 56.)

9. दक्ष] सामान्यं याचितं न्यासः आधिर्दाराश्च तद्धनम् ।
अन्वाहितं च निक्षेपः सर्वस्वं चान्वये सति ।
आपत्स्वपि न देयानि नव वस्तूनि पण्डितैः ।

9. Common property, what has been borrowed for a special occasion, a deposit sealed or open, a pledge, wife, wife's property, and the entire property if there is offspring,—these nine have been declared by the wise to be ungivable even in times of distress.—(Dakṣa in *Smṛtichandrikā*, p. 443.)

10. कात्यायन] सर्वस्वं गृहवर्जं तु कुटुम्बभरणाधिकं देयम् ।
यद्द्रव्यं तत् स्वकं देयम् ।

10. Barring the dwelling-house, one's own entire property, in excess of what is required for the maintenance of the family, may be given away.—(Kātyāyana in *Smṛtichandrikā*, p. 445; *Vivādaratnākara*, p. 129; *Vivādachintāmaṇi*, p. 57; *Vīramitrodaya*, p. 395.)

NOTES

'*Barring the dwelling-house.*'—This refers to cases where the man has only one house.—(*Vīramitrodaya*, p. 395.)

11. वसिष्ठ] न स्त्री पुत्रं दद्यात् प्रतिगृह्णीयाद्वाऽन्यत्रानुज्ञानाद् भर्तुः ।

11. The woman shall not give away, or receive, a son, except with the permission of her husband.—(Vashiṣṭha in *Vivādaratnākara* and in *Smṛtichandrikā*, p. 446.)

NOTES

'*Give away*'—this includes *selling* also.

WHAT MAY BE GIVEN

12. नारद 4. 6.] कुटुम्बभरणाद्द्रव्यं यत्किञ्चिदतिरिच्यते ।
तद्देयम् ॥

12. Whatever property there is in excess of what is required for the maintenance of the family may be given away.—(Nārada, 4. 6; in *Smṛtichandrikā*, p. 444.)

NOTES

'*Maintenance*,'—stands for the necessaries of life, not luxuries.—(*Smṛtichandrikā*, p. 444.)

13. बृहस्पति 15. 3.] कुटुम्बभक्तवसनाद्देयं यदतिरिच्यते ।

13. What is in excess of provision for the feeding and clothing of the family may be given away.—(Bṛhaspati, 15. 3; in *Smṛtichandrikā*, p. 444; *Vivādachintāmaṇi*, p. 57.)

14. बृहस्पति 15. 4.] सप्तागमाद् गृहक्षेत्रात् यद्यत् क्षेत्रं प्रचीयते ।
पित्र्यं वाथ स्वयम्प्राप्तं तद्दातव्यं विवक्षितम् ॥

14. Whether ancestral or self-acquired, land and other property may be given away out of what has been acquired by the seven modes of lawful acquisition,—when it is in excess (of what is needed for the maintenance of the family).—(Bṛhaspati, 15. 4; in *Smṛtichandrikā*, p. 444; *Vivādaratnākara*, p. 130; *Vivādachintāmaṇi*, p. 58.)

NOTES

This refers to immovable property.—(*Vīramitrodaya*, p. 394.)

'*Seven modes*'—Enumerated in Manu 10. 15: (1) Inheritance, (2) Finding of Treasure, (3) Purchase, (4) Conquest, (5) Money-lending, (6) Work, (7) Receiving gifts.—All that is meant is that gifts can be made only out of lawfully-acquired property, and that also only such as can be spared from the maintenance of the family.—(*Vivādaratnākara*, p. 130.)

What is meant is that any property that the man has, in any way, acquired absolutely for himself may be given at his own will; but what he has acquired jointly with others can be given away only with their consent.—(*Vivādachintāmaṇi*, p. 58.)

15. बृहस्पति 15. 6.] स्वेच्छादेयं स्वयम्प्राप्तम् ।

15. Self-acquired property may be given away at one's own pleasure. – (Bṛhaspati, 15. 5 ; *Vivādaratnākara*, p. 130.)

NOTES

'*At pleasure*,' – *i.e.*, even without the consent of brothers and others.— (*Viramitrodaya*, p. 395.)

What has been obtained at marriage shall not be given away without the wife's consent; and no ancestral property shall be given away without the consent of the son. – (*Aparārka*, 780.)

16. बृहस्पति 15. 5.] बन्धाचारेण बन्धकम् ।

16. What is held by one as a Pledge can be given away only as a Pledge.—(Bṛhaspati, 15. 5 ; *Vivādaratnākara*, p. 130.)

NOTES

The gift of the Pledge or Deposit may be made in this form – 'I am holding this property as a pledge or deposit, you also may keep it as a Pledge or Deposit, and restore it to the owner on realizing from him the amount due.'— (*Vivādachintāmaṇi*, p. 59.)

17. कात्यायन] [विक्रयं चैव दानं च न नेयाः स्युरनिच्छवः दाराः पुत्रश्च सर्वस्वम्] आपत्काले तु कर्तव्यं दानं विक्रय एव च ।

17. .... In times of distress one may give away, or sell, the son, the wife and the entire property.—(Kātyāyana in *Smṛti-chandrikā*, p. 446; *Vivādachintāmaṇi*, p. 56; *Vivādaratnākara*, p. 128.)

NOTES

There is no inconsistency between the two assertions (5 and 17), because what is asserted in 5 is that the son and the wife should not be given away even in times of distress, – and so also the entire property if there is progeny ; - while what is declared in 17 is that in times of distress the son and the wife may be given away with their consent, and the entire property may be given away with the consent of the progeny. So that what is forbidden is the giving away of the unwilling son and wife, and also of the entire property without the consent of the progeny. – (*Vivādaratnākara*, pp. 128 and 129.)

These three may be given away with the consent, respectively, of the son, the wife and the offspring. According to some people, even with the consent of the *offspring*, the entire property should not be given away ; as the prohibition of the gift of the entire property has been made contingent upon the mere *existence* of the 'offspring.' – (*Vivādachintāmaṇi*, p. 56.)

18. बृहस्पति 15. 6.] सौदायिकं क्रमायातं शौर्यप्राप्तं च यद् धनम् ।
स्त्रीज्ञातिस्वाम्यनुमतं दत्तं सिद्धिमवाप्नुयात् ॥

18. When (*a*) a marriage-gift, (*b*) an ancestral property, and (*c*) what is won by valour, are given away with the consent respectively of (*a*) the wife, (*b*) the kinsmen, and (*c*) the master, the gift acquires validity.—(Bṛhaspati, 15. 6 ; in *Vivādaratnākara*, p. 130 ; *Vivādachintāmaṇi*, p. 58.)

NOTES

(*a*) '*Marriage-gift*'—may be given away by the man with the consent of that wife at whose marriage he got the gift ;—(*b*) '*Ancestral property*' may be given away with the consent of such kinsmen as are living in the joint family ;—(*c*) what the servant has won in battle may be given by him with the consent of his master.—(*Smṛtichandrikā*, p. 446 ; *Aparārka*, p. 780.)

'*Marriage gift*'—This stands for that part of the dowry which has been given for the bride's use ; it is only in the giving away of such articles that the husband should require the wife's consent ; which cannot be necessary in the case of such articles as have been given for the bridegroom's own use.—In the case of '*ancestral property*,' immovable as well as movable, which has not been partitioned, the consent of the co-parceners is essential. In the case of what is '*won by valour*,' the master's consent should be necessary only in the giving away of conveyances and such things, not in that of clothes and such articles.—(*Vivādachintāmaṇi*, p. 58.)

(1) In the case *Ancestral property*—as the ownership of all the several co-parceners stands on the same footing—the giving away must require the consent of every one of them.—(2) In the case of all self-acquired property,—with the exception of the *marriage-gift* and *what has been won by valour*—the man is free to give whatever can be spared from the maintenance of the family.—(3) In the case of the *marriage-gift* the giving away requires the consent of the wife ; and in that of *what is won by valour*, the consent of the master is necessary.—(4) In the case of such *ancestral property* as has been partitioned also, the giving away can be done only with the consent of the other co-heirs.—(*Vivādaratnākara*, p. 132.)

19. बृहस्पति 15. 5.] वैवाहिके क्रमायाते सर्वदानं न विद्यते ।

19. Neither the marriage-gift nor the ancestral property may be given away in its entirety.—(Bṛhaspati, 15. 5 ; in *Vivādaratnākara*, p. 130 ; *Vivādachintāmaṇi*, p. 58.)

EXPLANATION

'*Marriage-gift*'—includes also *what has been won by valour*. What is meant by the prohibition herein contained is that the entire property cannot be given away without the consent of the offspring ; but with their consent, it could of course be given away.—(*Vivādaratnākara*, p. 130.)

'*Ancestral property*'—which has not been divided. -(*Vivādachintāmaṇi*, p. 58.)

20. स्मृत्यन्तर] एकोऽपि स्थावरे कुर्याद् दानाधमनविक्रयम् ।
आपत्काले कुटुम्बार्थे धर्मार्थेऽपि विशेषतः ॥

20. Even a single member of the joint family may give away, or pledge or sell immovable property in times of distress, for the sake of the family; specially for a religious purpose.—(Smṛtyantara in *Smṛtichandrikā*, p. 447; in *Vīramitrodaya*, p. 395; in *Aparārka*, p. 780.)

EXPLANATION

This refers to partitioned ancestral immovable property.—(*Smṛtichandrikā*, p. 447.)

The meaning is that in times of distress, immovable property can be given away, pledged or sold by a single member of the family with the consent of such co-parceners as have not been separated.—(*Aparārka*, p. 780.)

21. याज्ञवल्क्य 2.176.] देयं प्रतिश्रुतं चैव, दत्त्वा नापहरेत् पुनः ॥

21. What has been promised must be given; and having made a gift one should not resume it.—(Yājña. 2.176.)

EXPLANATION

When something has been promised to a person for a religious purpose, it should be given to him if the donor remains firm in that purpose; if he deviates from it, then it should not be given to him.—What has been given in the right manner should not be resumed; but what has been given in the wrong way should certainly be resumed —(*Mitākṣarā*.)

22. कात्यायन] स्वेच्छया यः प्रतिश्रुत्य ब्राह्मणाय प्रतिग्रहम् ।
न दद्याद् ऋणवद् दाप्यः प्राप्नुयात् पूर्वसाहसम् ॥

22. When a man has voluntarily promised a gift to a Brāhmaṇa,—if he does not give it, he should be made to give it, like a debt and should also be fined the first amercement.—(Kātyāyana in *Smṛtichandrikā*, p. 449.)

VALID GIFT

23. नारद 4. 8.] पण्यमूल्यं भृतिस्तुष्ट्या स्नेहात् प्रत्युपकारतः ।
स्त्रीशुल्कानुग्रहार्थं च दत्तं दानविदो विदुः ॥

बृहस्पति 15. 8.] भृतिस्तुष्ट्या पण्यमूल्यं स्त्रीशुल्कमुपकारिणे ।
श्रद्धानुग्रहसम्प्रीत्या दत्तमष्टविधं स्मृतम् ॥

23. (*a*) What is paid for a purchased commodity, (*b*) wages for work done, (*c*) what is given as a reward for satisfaction, (*d*) what is given from affection, (*e*) what is given in gratitude as recompense, (*f*) what is given for women, (*g*) what is given through kindness, and (*h*) what is presented through devotion,—these eight kinds of gifts are valid.—(Nārada, 4.8 ; also Bṛhaspati, 15. 8.)

Explanation

'*Reward*'—given to dancers and musicians (*Vivādachintāmaṇi*, p. 60 and *Smṛtichandrikā*, p. 449) ;—Given to persons conveying happy news, such as that of birth of a son.—(*Aparārka*, p.781.)

'*Given for women*'—What is given to the bride's people before marriage (*Smṛtichandrikā*, p. 449),—Present to one's wife (*Aparārka*, p. 781).

'*What is given through kindness*,'—Charitable gifts to the poor and destitute (*Mayūkha*, p. 204.)—What is given for religious purposes (*Vivādaratnākara*, p. 133). Gifts made to one's son and such others as a mark of favour (*Vivādachintāmaṇi*, p. 61).

'*Valid*'—That is, they should not be resumed.—(*Smṛtichandrikā*; p 449.)

Bṛhaspati adds *Shraddhā* Faith, Devotion, to the seven enumerated by Nārada.

Invalid Gift

24. बृहस्पति 15. 8.] क्रुद्धभ्रष्टप्रमत्तार्तबालोन्मत्तभयातुरैः ।
मत्तातिवृद्धनिर्धूतैः सम्मूढैः शोकवेगिभिः ।
नर्मदत्तं तु तैर्यत् स्यात् तददत्तं प्रकीर्तितम् ॥

24. What has been given by one angry, or resenting an injury, or through inadvertance, or by one distressed, or by a minor, or by one insane, or terrified, or intoxicated, or too old, by an outcast, or an idiot, or by one afflicted with grief or illness,—or what is given in jest ;—all such gifts are void.—(Bṛhaspati, 15.9-10.)

Explanation

'*Narmadattam*'—Given in jest (*Smṛtichandrikā*, p. 453) ;—'given playfully' (*Vivādaratnākara*, p. 136).

'*Too old*'—One whose sense-organs have become decayed.—(*Vivādachintāmaṇi*, p. 62.)

Kātyāyana (in *Vivādaratnākara*, p. 135) adds 'what is given to win the love of a woman.'

25. नारद 9. 11.] अदत्तं तु भयक्रोधकामशोकरुगन्वितैः ।
तथोत्कोचपरीहासव्यत्यासच्छलयोगतः ॥
बालमूढास्वतन्त्रार्तमत्तोन्मत्तापवर्जितैः ।
कर्तामममायं कर्मेति प्रतिलाभेच्छया च यत् ॥
अपात्रे पात्रमित्युक्ते कार्येवाऽधर्मसंहिते ।

25. The following gifts are invalid : What has been given by a man under the influence of fear, of anger, or of grief,—by one suffering from disease,—what is given as bribe, or in jest, or by mistake, or by fraud ;—what is given by a minor, by an idiot, by one who is not his own master, by one distressed, or intoxicated or insane,—by an outcast,—and what is given with the expectation of some work in return. It is also an invalid gift when it is given through ignorance, to an unworthy person who represents himself to be worthy, or for an immoral purpose.—(Nārada, 4. 9—11 ; in *Vivādaratnākara*, p. 134.)

NOTES

'*Fear*'—From the man to whom the gift is made—and the other conditions are meant to be so violent as to upset one's mind.—(*Vivādaratnākara*, p. 135.)

'*Vyatyāsa*'—'mistake,' in regard to the object given or to the person to whom it is given (*Vivādachintāmaṇi*, p. 61, also *Vivādaratnākara*, p. 135 and *Parāsharamādhava*, p. 223, which confines it to mistake in regard to the article given) ; so also *Mayūkha*, p. 204, which latter confines it to mistake in regard to the *recipient*. It may be taken as 'Interchange'—A giving one thing to B who gives another to A.—(*Vīramitrodaya*, p. 398 ; also *Mitākṣarā*.)

'*Fraud*'—*e.g.*, while really presenting only a *hundred*, declaring and representing it to be a *thousand*.—(*Vīramitrodaya*, p. 398) ; or knowing that a cow is going to be given to A, B disguises himself as A and receives the cow.—(*Mayūkha*, p. 204.)

'*Mūḍha*'—'Illiterate, ignorant of the Veda and worldly experience,'—(*Vīramitrodaya*, p. 398);—'bewildered in regard to the recipient' (*Smṛtichandrikā*, p. 451)—'One who, by his very nature, is unable to discriminate between right and wrong.'—(*Vivādaratnākara*, p. 135) ;—'Idiot' (*Vivādachintāmaṇi*, p. 61.)

'*Bāla*'—'Minor—under 16 years old' (*Mitākṣarā* and *Parāsharamādhava*, p. 228) ;—'anyone who is unable to discriminate between what ought and what ought not to be done,'—not necessarily a *Minor*. (*Vivādaratnākara*, p. 135.)

'*One who is not his own master*'—the son, the slave and so forth,—(All) commentators.

'*What is given in expectation*, etc., '—That is, to one who has not readily done that service.—(*Vīramitrodaya*, p. 398 and *Smṛtichandrikā*, p. 451.)

'*Bribe*'—Thus defined by Kātyāyana (quoted in all the Nibandhas)—What is given to one who is going to expose theft, crime, misdemeanour, adultery, —or to one who is going to depose falsely,—is called *Bribe*; this should not be given, even though promised; the receiver of the bribe as also the intermediary are to be punished.'

'*Ārta*'—distressed, *e.g.*, when a man being carried away by a swift stream cries out 'I shall pay a hundred gold-pieces to anyone who saves me from death'—says Asahāya—(see next section).

26. कात्यायन] प्राणसंशयमापन्नं यो मामुत्तारयेदितः ।
सर्वस्वं तस्य दास्यामीत्युक्तेऽपि न तथा भवेत् ॥

26. When a man who is on the point of death says 'I shall give my entire property to any one who saves me,'—such a gift, even though made, would be invalid.—(Kātyāyana in *Smṛtichandrikā*, p. 450; *Vivādaratnākara*, p. 134.)

27. बृहस्पति15. 11.] प्रतिलाभेच्छया दत्तमपात्रे पात्रशङ्कया ।
कार्ये चाधर्मसंयुक्ते स्वामी तत् पुनराप्नुयात् ॥

27. When anything has been given through desire for a gift in return,—or to an unworthy person mistaken for a worthy person,—or for an immoral purpose,—the owner may resume that gift.—(Bṛhaspati, 15.11; in *Vivādaratnākara*, p. 136.)

28. व्यास] स्थावरं द्विपदं चैव यद्यपि स्वयमर्जितम् ।
असम्भूय सुतान् सर्वान् न दानं न च विक्रयः ।
ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः ।
वृत्तिं च तेऽभिकांक्षन्ति न दानं न च विक्रयः ॥

28. Immovable property and cattle, even though self-acquired, cannot be given away or sold without the consent of all one's sons. There can be no sale or gift of any such property as would be the means of livelihood for sons already born and those yet to be born.—(Vyāsa in *Vīramitrodaya*, p. 395.)

NOTES

'*Sons*'—Those that have attained their majority.—(*Vīramitrodaya*, p. 395.)

29. मनु 8. 212.] धर्मार्थं येन दत्तं स्यात् कस्मैचिद् याचते धनम् ।
पश्चाच्च न तथा तत् स्यात् न देयं तस्य तद् भवेत् ॥

29. When a man gives money for a pious purpose to another who asks for it,—if, subsequently, it is not used for that purpose, then it shall not be given to him.—(Manu, 8. 212.)

NOTES

This means that (*a*) what has been promised should not be given and (*b*) what has been given should be taken away.—(*Medhātithi.*)

30. मनु 8. 213.] यदि संसाधयेत्तत्तु दर्पाल्लोभेन वा पुनः ।
राज्ञा दाप्यः सुवर्णं स्यात् तस्य स्तेयस्य निष्कृतिः ॥

30. If, through arrogance or greed, the man should seek to recover the gift, he should be made by the king to pay one gold-piece, as an expiation for that theft.—(Manu, 8. 213.)

31. कात्यायन] स्वस्थेनार्तेन वा दत्तं श्रावितं धर्मकारणात् ।
अदत्त्वा तु मृते दाप्यस्तत्सुतो नात्र संशयः ।

31. Healthy or distressed, when a man has promised a gift for a religious purpose,—if he happen to die without having given it, his son shall certainly be made to give it.—(Kātyāyana in *Smṛtichandrikā*, p. 453.)

32. मनु 8. 165.] योगाधमनविक्रीतं योगदानप्रतिग्रहम् ।
यत्र वाप्युपधिं पश्येत् तत्सर्वं विनिवर्तयेत् ॥

32. Fraudulent mortgages and sales, fraudulent gifts and acceptances,—as also all transactions wherein he detects fraud,—the king shall nullify.—(Manu, 8. 165.)

33. कात्यायन] यदि कार्यस्य सिद्ध्यर्थमुत्कोचा या प्रतिश्रुता ।
तस्मिन्नपि प्रसिद्धेऽर्थे न देया सा कथंचन ॥
यदि प्रागेव दत्ता स्यात्प्रतिदाप्यः स तां बलात् ।
दंडं चैकादशगुणम् ॥

33. When a bribe has been promised for a certain work,—even if that work be accomplished,—the bribe should

never be given ; if it has been given, it should be taken back by force ; and the receiver should be fined eleven times the amount of the bribe.—(Kātyāyana in *Vivādaratnākara*, p. 135.)

PENALTIES

34. नारद] गृह्णात्यत्तं यो मोहात् यश्चादेयं प्रयच्छति ।
दंडनीयावुभावेतौ धर्मज्ञेन महीक्षिता ॥

34. He who accepts an invalid gift and he who gives something that should not be given,—both of these should be punished by the righteous king.—(Nārada in *Smṛtichandrikā*, p. 454.)

NOTES

The implication of this is that, if a thing that should not be given has been given, the king shall have it returned.—(*Smṛtichandrikā*, p. 444.)

35. मत्स्यपुराण] प्रतिश्रुत्याप्रदातारं सुवर्णं दण्डयेन्नृपः ॥

35. If a man, having promised a gift, fails to give it, he should be fined by the King one '*Suvarṇa*'—(Matsyapurāṇa in *Vivādaratnākara*, p. 132.)

CHAPTER X

LAW OF EMPLOYER AND EMPLOYEE

EMPLOYEES CLASSIFIED

1. नारद 5. 3-4.] शुश्रूषकः पञ्चविधः शास्त्रे दृष्टो मनीषिभिः ।
शिष्यान्तेवासिभृतकाश्चतुर्थस्त्वधिकर्मकृत् ।
एते कर्मकरा ज्ञेया दासास्तु गृहजातयः ।
सामान्यमस्वतन्त्रत्वं तेषामाहुर्मनीषिणः ॥

1. There are five kinds of employees : (*a*) Pupil, (*b*) Apprentice, (*c*) Hireling, (*d*) Manager, (*e*) Slave.—The one characteristic common to all these is that they are not their own master.—(Nārada, 5.3-4 in *Vīramitrodaya*, 401.)

NOTES

The first four are called '*Karmakara*,' 'servitor' or 'labourer.' The distinction between the 'servitor' and the 'slave' is thus explained by *Vīramitrodaya* (p. 405).—When the man surrenders himself entirely and absolutely to the service of his master, he is a 'slave'; when he simply undertakes to serve the master (without surrendering himself entirely), he is a 'servitor' or 'servant.'

PUPIL

2. नारद] आविद्याग्रहणाच्छिष्यः शुश्रूषेत्प्रयतो गुरुम् ।
समावृत्तस्तु गुरवे प्रदाय गुरुदक्षिणाम् ।
प्रतीयात् स्वगृहानेषा शिष्यवृत्तिरुदाहृता ॥

2. The duty of the pupil is to reside with the teacher learn the Veda under him and at the conclusion of his study, pay a decent fee to the teacher and take the final bath; finally returning home to set up a house for himself.—(Nārada in *Smṛtichandrikā*, p. 459.)

APPRENTICE

3. बृहस्पति 16. 6.] विज्ञानमुच्यते शिल्पं हेमकुप्यादिसंस्कृतिः ।
नृत्तादिकं च यत् प्राप्तुं कर्म कुर्याद्गुरोर्गृहे ॥

3. Working in gold and other metals, dancing, singing and the rest are known as 'craft'; for the purpose of learning an art, the apprentice should do work in the teacher's household.—(Bṛhaspati, 16. 6.)

NOTES

'*Working in gold, etc.*'—The craft of the goldsmith. Those named here are only by way of illustration ; the work of the mason, the potter and such other artisans are all meant to be included.—(*Smṛtichandrikā*, p. 456.)

4. नारद 5. 16.] स्वशिल्पमिच्छन्नाहर्तुं बान्धवानामनुज्ञया ।
आचार्यस्य वसेदन्ते कालं कृत्वा सुनिश्चितम् ॥

4. If a young man wishes to be initiated into his own craft, with the sanction of his relations, he should go and live with a master,—the exact duration of apprenticeship having been previously fixed.—(Nārada, 5.16.)

5. नारद 5. 17.] आचार्यः शिक्षयेदेनं स्वगृहे दत्तभोजनम् ।
न चान्यत् कारयेत् कर्म पुत्रवच्चैनमाचरेत् ॥

5. The master shall teach him at his own house and shall feed him ; he should not make him do other work ; he should treat him like a son.—(Nārada, 5. 17 ; in *Smṛtichandrikā*, p. 456.)

NOTES

As the apprentice is not to be made to do any other work, the only way in which he can serve the master is through handing over to him the product of his craft during apprenticeship.—(*Smṛtichandrikā*, p. 456.)

6. कात्यायन] यस्तु न ग्राहयेच्छिल्पं कर्माण्यन्यानि कारयेत् ।
प्राप्नुयात् साहसं पूर्वं तस्माच्छिष्यो निवर्तते ॥

6. If the master does not teach the craft to the apprentice, and makes him do other works he should be fined the first amercement, and the apprentice should withdraw himself from him.—(Kātyāyana in *Smṛtichandrikā*, p. 457 and *Vīramitrodaya*, p. 403.)

7. नारद 5. 18.] शिक्षयन्तमदुष्टं च यस्त्वाचार्यं परित्यजेत् ।
बलाद्वासयितव्यः स्याद् वधबन्धौ च सोऽर्हति ॥

7. If the apprentice forsake the master who is instructing him and whose character is unexceptionable,—he should be compelled by force to remain with the master, and should suffer corporal punishment and confinement.—(Nārada, 5.18 ; in *Smṛtichandrikā*, p. 457.)

8. नारद 5. 19.] शिक्षितोऽपि कृतं कालमन्तेवासी समापयेत् ।
तत्र कर्म च यत् कुर्यात् आचार्यस्यैव तत्फलम् ॥

8. Even if his course of instruction be completed before the stipulated period, the apprentice should remain with the master till the expiry of that period ; whatever work he may do during the time, the product thereof shall belong to the master.—(Nārada, 5.19 ; in *Smṛtichandrikā*, p. 457.)

9. याज्ञवल्क्य 2. 184.] कृतशिल्पोऽपि निवसेत् कृतं कालं गुरोर्गृहे ।
अन्तेवासी गुरुप्राप्तभोजनस्तत्फलप्रदः ॥

9. Even after he has learnt the craft, the apprentice shall continue to reside with the teacher till the expiry of the stipulated time, receiving his fooding from the master and making over the products of his work to him. –(Yājña. 2.184.)

10. नारद 5. 20] गृहीतशिल्पः समये कृत्वाचार्यप्रदक्षिणम् ।
शक्तितश्चानुमान्यैनमन्तेवासी निवर्तयेत् ॥

10. After having learnt his craft in the stipulated time, the apprentice shall pay to the master an adequate fee to the best of his power, and, after obtaining his permission, shall return home.—(Nārada, 5.20 ; in *Smṛtichandrikā*, p. 457.)

11. मत्स्यपुराण] मूल्यमादाय यो विद्यां शिल्पं वा न प्रयच्छति ।
दण्ड्यः सः ॥

11. A master who, having received his fee, does not impart instruction in the craft, should be fined by the king.—(Matsyapurāṇa in *Vivādaratnākara*, p. 163.)

HIRELING

12. नारद 5. 22-23.] भृतकस्त्रिविधो ज्ञेय उत्तमो मध्यमोऽधमः ।
शक्तिभक्त्यनुरूपा स्यादेषां कर्माश्रया भृतिः ॥
आयुधी तूत्तमः प्रोक्तो मध्यमस्तु कृषीवलः ।
भारवाहोऽधमः प्रोक्तस्तथा च गृहकर्मकृत् ॥

12. Hirelings are of three kinds—Highest, Middlemost and Lowest. Their wages are fixed in proportion to their skill and to the value of their services.—Warriors constitute the highest class ; agriculturists, the middlemost, and carriers and domestic servants, the lowest.—(Nārada, 5. 22-23 ; in *Vīramitrodaya*, pp. 404-405.)

13. बृहस्पति 16.7-8.] यो भुङ्क्ते परदासीं तु स ज्ञेयो वनिताभृतः ।
कर्म तत्स्वामिनः कुर्यात् तथाऽन्योऽर्थभृतो नरः ॥
बहुधाऽर्थभृतः प्रोक्तः तथा भागभृतो ऽपरः ।

13. Another classification of Hirelings is as follows:—(a) *Working for his wife*—one who marries a slave-girl and works for her master; (b) *working for wages*—one who works in return for cash-wages; (c) *working for share*—one who does work and receives payment in the shape of a share in the product of the work.—(Bṛhaspati, 16. 7-8.)

14. नारद] द्विप्रकारा भागभृताः कृषिगोजीविनः स्मृताः ।
जातसस्यात् तथा क्षीरात् स लभेत न संशयः ॥

14. Hirelings *working for share* are of two kinds—consisting of (a) agriculturists and (b) cattle-tenders; the former receive a share of the produce of the land and the latter a share of the milk.—(Nārada quoted in *Vivādaratnākara*, p. 143; in *Vīramitrodaya*, p. 405 and in *Smṛtichandrikā*, p. 458.)

15. बृहस्पति] दिनमासार्धषण्मासत्रिमासाब्दभृतस्तथा ।

15. A hireling may be engaged for a day, a fortnight, a month, two months, six months, or a year.—(Bṛhaspati, 16. 9; in *Smṛtichandrikā*, p. 458.)

MANAGER

16. नारद 5. 24.] सर्वेष्वधिकृतो यः स्यात् कुटुम्बस्य तथोपरि ।
सोऽधिकर्मकृतो ज्ञेयः स च कौटुम्बिकः स्मृतः ॥

16. The *manager* is one who has been appointed *to supervise the work of all other servants* [or, according to another reading, *to manage all the properties of the master*], and to superintend the household. He is also called '*Kauttumbika*' (general family servant).—(Nārada, 5. 24; in *Smṛtichandrikā*, p. 459.)

NOTES

According to *Vivādaratnākara* (p. 143) there are two persons mentioned here: (a) the manager of all properties, and (b) the manager of the household.

17. नारद 5. 6-7.] शुभकर्मकरा इत्येते चत्वारः समुदाहृताः ।
गृहद्वाराशुचिस्थानरथ्यावस्करशोधनम् ॥
गुह्याङ्गस्पर्शनोच्छिष्टविण्मूत्रग्रहणोज्झनम् ।
इष्टतः स्वामिनश्चाङ्गैरुपस्थानमथान्ततः ।
अशुभं कर्म विज्ञेयं शुभं तु परतः परम् ॥

17. These four classes of employees (the Pupil, the Apprentice, the Hireling and the Manager) do such work as is called 'pure'; all 'dirty' work being done by the fifth class of *slaves*—(Nārada, 5. 25);—such work for instance, as sweeping of, the gate-way of the privy, of the road, and of the place for rubbish; shampooing the secret parts of the body; removing of food-leavings, of ordure or of wine; rubbing the master's limbs.—(Nārada, 5. 6-7; *Smṛtichandrikā*, p. 459.)

SLAVES

18. नारद 5. 26-28.] गृहजातस्तथा क्रीतो लब्धो दायादुपागतः ।
अनाकालभृतस्तद्वत् आहितः स्वामिना च यः ॥
मोचितो महतश्चर्णात् युद्धे प्राप्तः पणे जितः ।
तवाहमित्युपगतः प्रव्रज्यावसितः कृतः ॥
भक्तदासश्च विज्ञेयस्तथैव वडवाहृतः ।
विक्रेता चात्मनः शास्त्रे दासाः पञ्चदश स्मृताः

18. There are fifteen kinds of slaves: (1) born in the master's house, (2) bought, (3) received in gift, (4) hereditary, (5) maintained during famine, (6) received in mortgage, (7) enslaved by being released from a heavy debt, (8) captured in battle, (9) won through wager, (10) one who has surrendered himself saying 'I am thine,' (11) an apostate from renunciation, (12) enslaved for a stipulated period, (13) one who has become a slave for securing maintenance, (14) one enslaved on account of his connection with a slave-girl, and (15) self-sold.—(Nārada, 5. 26—28; in *Smṛtichandrikā*, pp. 463-464.)

19. मनु 8. 415.] ध्वजाहृतो भक्तदासो गृहजः क्रीतदत्रिमौ ।
पैत्रिको दण्डदासश्च सप्तैते दासयोनयः ॥

19. There are seven kinds of slaves: (1) captured in battle, (2) slave for food, (3) born in the house, (4) bought, (5) received in gift, (6) hereditary, and (7) slave by punishment.—(Manu, 8. 415.)

NOTES

Aparārka (p. 789), *Mitākṣarā* (2. 182) and *Parāsharamādhava* (p. 240) remark that Manu's sevenfold classification is not meant to be exhaustive; the complete list is the one supplied by Nārada (above).

20. कात्यायन] दास्यं विप्रस्य न क्वचित् ।

20. [Men of the three lower castes only can be slaves]; the Brāhmaṇa shall never be a slave.—(Kātyāyana in *Smṛtichandrikā*, p. 460.)

21. विष्णु 5. 151.] यस्तूत्तमवर्णं दास्ये नियोजयति तस्योत्तमसाहसो दण्डः ।

21. One who makes a slave of a member of the Brāhmaṇa caste shall pay the highest amercement.—(Viṣṇu, 5. 151 in *Smṛtichandrikā*, p. 463.)

22. याज्ञवल्क्य 2. 183.] वर्णानामानुलोम्येन दास्यं न प्रतिलोमतः ।

22. Among the four castes slavery is ordained in the order in which they are mentioned, not in the inverse order.—(Yājña. 2. 183; and Kātyāyana in *Parāsharamādhava*, p. 243.)

NOTES

The meaning is that a person of the lower caste can be the slave of a person of the higher caste, not *vice versa*.—(*Aparārka*.)

23. मनु 8. 412.] दास्यं तु कारयन् लोभाद् ब्राह्मणः संस्कृतान् द्विजान् ।
अनिच्छतः प्राभवत्याद् राज्ञा दण्ड्यः शतानि षट् ॥

23. If a Brāhmaṇa makes sanctified twice-born persons do servile work, against their will,—he shall be fined by the king six hundred.—(Manu, 8. 412.)

NOTES

According to Medhātithi this refers to Brāhmaṇas, not to *all* the three 'twice-born' castes; the meaning is that if a Brāhmaṇa makes his fellow-casteman do such servile work as the washing of feet, removing of offal, sweeping and so forth, he should be fined 600, if he does it through *greed*; if he does it through malice, the fine should be heavier.

'*Six hundred*'—Paṇas are meant.—(*Aparārka*, p. 789.)

'*Servile work*'—such work as should be done by the Shūdra only. (*Vivādachintāmaṇi*, p. 72).—This implies that all the three 'twice'-born castes are meant, not the Brāhmaṇa only.

24. मनु 8. 411.] क्षत्रियं चैव वैश्यं च ब्राह्मणो वृत्तिकर्षितौ ।
विभृयादानृशंस्येन स्वानि कर्माणि कारयेत् ॥

24. If a Kṣattriya or a Vaishya is in want of livelihood, the Brāhmaṇa shall support him and make him do his own work.—(Manu, 8. 411.)

NOTES

'Own work.'—The Brāhmaṇa's own work, such as the fetching of water, fuel and such things, but not such work as personal attendance, washing of unclean things and the like.—(*Medhātithi.*)

25. कात्यायन] शीलाध्ययनसम्पन्ने तदूनं कर्म कामतः ।
तत्रापि नाशुभं कर्म प्रकुर्वीत द्विजोत्तमः ॥

25. If the Brāhmaṇa voluntarily becomes a slave, he may do even servile work for a Brāhmaṇa endowed with learning and character; but of his own accord (and in the spirit of helping the master), and without receiving any wages; but he shall never do any 'dirty' work.—(Kātyāyana in *Vīramitrodaya*, p. 407.)

EMANCIPATION OF SLAVES

26. नारद] तत्र पूर्वश्चतुर्वर्गो दासत्वान्न विमुच्यते ।
प्रसादात् स्वामिनोऽन्यत्र ॥
विक्रीणीते स्वतन्त्रः सन् य आत्मानं नराधमः ।
स जघन्यतमस्तेषां सोऽपि दास्यान्न मुच्यते ॥
यो वैषां स्वामिनं कश्चित् मोचयेत् प्राणसंशयात् ।
दासत्वात् स विमुच्येत पुत्रभागं लभेत च ॥
राज्ञ एव तु दासः स्यात् प्रव्रज्यावसितो नरः ।
न तस्य प्रतिमोक्षोऽस्ति नात्र शुद्धिः कथंचन ॥
अनाकालभृतो दास्यात् मुच्यते गोयुगं ददत् ।
आहितोऽपि धनं दत्वा स्वामी यद्येनमुद्धरेत् ॥
ऋणं तु सोदयं दत्वा ऋणी दास्याद्विमुच्यते ।
तवाहमित्युपगतो युद्धे प्राप्तः पणे जितः ॥
प्रतिशीर्षप्रदानेन मुच्येरन् तुल्यकर्मणा ।
कृतकालव्यतिगमात् कृतकोऽपि विमुच्यते ॥

भक्त स्योत्क्षेपणात् सद्यो भक्तदासः प्रमुच्यते ।
निग्रहाद्वडवायास्तु मुच्यते वडवाहृतः ॥
चोरोपहृतविक्रीता ये च दासीकृता बलात् ।
राज्ञा मोचयितव्यास्ते दासत्वन्तेषु नेष्यते ॥

26. The slave born in the master's house, or one bought, or one received in gift, or the hereditary slave, or one who has sold himself, cannot be emancipated except by the favour of the owners.—Should any one of them save his master's life, he shall be released from slavery, and shall receive a son's share in the master's wealth. The slave maintained during a famine is released from bondage by giving a pair of oxen. The slave received in mortgage is released when his original master redeems him by discharging the debt; if however the master hands him over to the pledgee in payment of the debt, he remains with his new master as his purchased slave. It is by paying off the debt with interest that the debtor is released from slavery. One enslaved for a stipulated period regains his freedom on the expiry of that period.

One who has surrendered himself, one captured in battle, one won through a wager,—these are released on giving a substitute whose capacity for work is equal to their own.—The apostate from Renunciation shall remain the king's slave as long as he lives; he can never be emancipated.

One who has become a slave for securing maintenance is released on giving up the said subsistence.—One enslaved on account of his connection with a slave-girl is released on parting with her.—The slave who has sold himself can never be released from bondage.—Those who are sold (or mortgaged or given away) after having been captured by robbers,—and those who are enslaved by forcible means—must be emancipated by the king; as their slavery is not legal.—(Nārada, 5. 29—38; in *Smṛti-chandrikā*, 4. 464—468.)

NOTES

According to *Mitākṣarā*, (2. 182) all kinds of slave become entitled to Emancipation by saving the life of the master.

This rule is applicable only to cases where the apostate has refused to perform the prescribed expiatory penances—says *Mitākṣarā*.

According to *Smṛtichandrikā* (p. 465), this refers to the Kṣattriya and the Vaishya, not the Brāhmaṇa,—as is made clear by the following text.

27. कात्यायन] प्रवज्यावसिता यत्र त्रयो वर्णा द्विजातयः ।
निर्वासं कारयेद्विप्रं दासत्वं क्षत्रविड भृगुः ॥

27. If men belonging to the three twice-born castes become apostates to Renunciation, the Brāhmaṇa should be banished and the Kṣattriya and the Vaishya should be enslaved.—(Kātyāyana in *Aparārka*, p. 78 and in *Smṛtichandrikā*, p. 466; —or Dakṣa, 7.33, according to *Mayūkha*, p. 207.)

28. मनु (?)] न स्वामिना विसृष्टोऽपि शूद्रो दास्यात् प्रमुच्यते ।

28. The Shūdra slave is not emancipated from slavery, even though he may be released by his master.—(Attributed to Manu in *Aparārka*, p. 788, and *Vivādaratnākara*, p. 146; but to *Mārkaṇḍeya Purāṇa* in *Vivādachintāmaṇi*.)

NOTES

According to *Vivādachintamāṇi* this text is not mandatory.

29. कात्यायन] स्वदासीं यस्तु सङ्गच्छेत् प्रसूता च भवेत्ततः ।
अवेक्ष्य बीजं कार्या स्यान्न दासी सान्वया तु सा ॥

29. If a man has intercourse with his slave-girl and she gives birth to a child, then, in consideration of the child, she should be released from bondage, along with the child.—(Kātyāyana in *Smṛtichandrikā*, p. 468; and in *Vīramitrodaya*, p. 412; *Arthashāstra*, 3.13.)

NOTES

This rule is meant for a case where the man has no other son,—says *Vivādachintāmaṇi* (p. 70).

Mayūkha (p. 210) remarks that this is to be done only if the child born is found to possess exceptional qualities.

If such an emancipated girl turn out to be an expert housewife devoted to the interests of the family, her mother, brother, sister also shall be freed from bondage.—(*Arthashāstra*, 3. 13.)

30. नारद 5. 42—44.] स्वदासमिच्छेद्यः कर्तुमदासं प्रीतमानसः ।
स्कन्धादादाय तस्यासौ भिन्द्यात् कुम्भं सहाम्भसा ॥
साक्षताभिः सपुष्पाभिः मूर्धन्यद्भिरवाकिरेत् ।
अदास इति चोक्त्वा त्रिःप्राङ्मुखस्तमथोत्सृजेत् ॥
ततः प्रभृति कर्तव्यः स्वाम्यनुग्रहपालितः ।
भोज्यान्नोऽथ प्रतिग्राह्यो भवत्यभिमतः सताम् ॥

30. When one desires to emancipate a slave, he shall take from the slave's shoulder a jar filled with water and smash it on the ground ; he shall sprinkle the slave's head with water containing grains and flowers, and having declared him to be a free man three times, he shall send him away with his face turned towards the East.—From that time, it shall be said that the man is cherished by the favour of his master ; thenceforward, his food may be eaten and presents accepted from him, and he shall be respected.—(Nārada, 5. 42—44.)

31. कात्यायन] दासस्य तु धनं यत् स्यात् स्वामी तस्य प्रभुः स्मृतः ।

31. Whatever property the slave may have, his master is its owner.—(Kātyāyana in *Vivādaratnākara*, p. 150 and in *Smṛtichandrikā*, p. 469.)

32. मनु 8. 416.] भार्या पुत्रश्च दासश्च त्रय एवाधनाः स्मृताः ।
यत्ते समधिगच्छन्ति यस्य ते तस्य तद्धनम् ॥

32. The wife, the son and the slave have no property ; whatever they may acquire is the property of him to whom they belong.—(Manu, 8. 416.)

NOTES

What is meant by this text is that the persons mentioned are not independent ; without the husband's sanction the wife cannot employ her wealth ; similarly with the son and the slave.—(*Medhātithi.*)

33. देवल] पत्यौ जीवति नारीणां दासानां स्वामिनि स्थिते ।
तद्वन्नियतमस्वाम्यं सर्वार्थेष्वब्रवीन्मनुः ॥

33. So long as the woman's husband is alive, and so long as the slave's master is alive, either the woman or the slave can have no proprietary right over anything.—(Devala in *Vivādaratuākara*, p. 150.)

34. मनु (?)] दासेनोढा त्वदासी या सापि दासीत्वमाप्नुयात् ।

34. If a slave marries a free woman, the latter also becomes a slave.—(Kātyāyana in *Mayūkha*, p. 211; but Manu in *Vivādaratnākara*, p. 150.)

35. कात्यायन] आदद्याद् ब्राह्मणीं यस्तु विक्रीणीयात्तथैव च ।
राज्ञा तदकृतं कार्यं दण्ड्याः स्युः सर्व एव ते ॥

35. If a man purchases or sells a Brāhmaṇa woman, the king should annul the sale, and punish all the parties concerned.—(Kātyāyana in *Vivādaratnākara*, p. 154.)

36. कात्यायन] कामात्तु संश्रितां यश्च दासीं कुर्यात् कुलस्त्रियम् ।
सङ्क्रामयेत्तथाऽन्यत्र दण्ड्यस्तच्चाकृतं भवेत् ॥

36. When a woman of a noble family seeks shelter with a man, of her own accord,—if he transfer her to another person, this transference shall be void and the transferor shall be punished.—(Kātyāyana in *Vivādaratnākara*, p. 154.)

37. कात्यायन] बालधात्रीमदासीं च दासीमिव भुनक्ति यः ।
परिचारकपत्नीं वा प्राप्नुयात् पूर्वसाहसम् ॥

37. If a man enjoys as a slave, either his child's nurse, or his servant's wife,—neither of whom is his slave,—he should suffer the first amercement.—(Kātyāyana in *Vivādaratnākara*, p. 155.)

38. कात्यायन] विक्रोशमानां यो भुक्तां दासीं विक्रेतुमिच्छति ।
अनापदिस्थः शक्तः सन् प्राप्नुयाद् द्विशतं दमम् ॥

38. If a capable man, in normal circumstances, sells a slave-girl whom he has enjoyed, who is not willing to go, he should be fined 200.—(Kātyāyana in *Vivādaratnākara*, p. 155.)

NOTES

The *Arthashāstra* (3. 13) has the following rules :

(*a*) If a Shūdra, who is of noble character and a minor, is pledged or sold by his relative as a slave, that relative shall be fined 12 *Paṇas* ;—if a Vaishya, 24 *Paṇas* ;—if a Kṣattriya, 36 *Paṇas* ;—if a Brāhmaṇa, 48 *Paṇas*. If the pledging or selling is done by one who is not a relative, the punishment shall be the first amercement, the middle amercement, the highest amercement and death respectively, for both the seller and the buyer. But this rule will not apply to cases where the child has been sold or pledged solely with a view to secure food and clothing for him.

(*b*) The Mllechhas incur no guilt by selling or pledging their children.

(*c*) An *Ārya* shall never be a slave.—But in times of distress, and for the purpose of saving a large number of Āryas from a calamity, an *Ārya* boy may be pledged ; but as soon as the distress is over, he shall be redeemed.

(*d*) If a man who has pledged himself to a person leaves him once, he may not return to him [but shall pay off the debt forthwith]. The same if one who has been pledged by another, leaves the pledgee twice.

(*e*) If a born slave commits theft in the house of his master, his punishment shall be half of that inflicted upon a thief for committing theft in the house of an Ārya.

(*f*) If the pledged slave has run away, or dies, or becomes addicted to vices, the pledgee shall pay his price to the pledgor.

(*g*) If slave-girls that have been pledged are made to carry the dead, or clean urine and excreta, or bathe the naked body of the pledgee, or are struck with a stick, or are defiled by intercourse,—the pledgee loses their value.—If the said work is taken out of such women as nurses, personal attendants, or cultivator's wives,—it brings about their emancipation.

(*h*) If a man has sold himself as a slave, his children (born before the sale) are not to be regarded as slaves.—Such a slave shall be entitled to acquire and inherit such property as may not interfere with his duties to his master.—He can get himself emancipated by repaying the price he had received for himself.—The same rule applies to the 'slave for food.'—The emancipation of such slaves shall be in accordance with the terms agreed upon at the time of the sale.—If such a slave is fined, he should pay up the fine by his labour.

(*i*) If a noble-born person has been enslaved in battle, he shall gain his freedom by paying off half the price that may be fixed for him in accordance with the times.

(*j*) If a man engages an unwilling 'home-born,' or 'inherited,' or 'bought' slave-boy,—less than eight years in age, who has no relations—in servile work ;—or sells him into foreign lands,—he shall be fined 250 *Paṇas*.

(*k*) If a man pledges or sells a pregnant slave-girl,—without having arranged for her delivery and nursing,—he shall be fined 250 *Paṇas*; so also the purchaser.

(*l*) If a man refuses to emancipate a slave when the proper compensation is offered, he is to be fined 12 *Paṇas*.

(*m*) If a man, having bought a slave-girl, sells or pledges her again, he shall be fined 12 *Paṇas*; except when it is done at her request.—(*Arthashāstra*, 3. 13.)

NON-PAYMENT OF WAGES

39. नारद 6. 2.] भृत्याय वेतनं दद्यात् कर्मस्वामी यथाकृतम् ।
आदौ मध्ये विरामे च कर्मणो यद्विनिश्चितम् ॥

39. A master shall regularly pay the stipulated wages to the servant hired by him, at the commencement, at the middle and at the completion of the work.—(Nārada, 6. 2 ; in *Vivādaratnākara*, p. 156.)

NOTES

In the proportion of five at the commencement, seven at the middle and 28 at the completion,—says *Vivādaratnākara* (p. 156).

This rule applies to cases where there has been no such stipulation as that the whole wages shall be paid at the commencement.—(*Smṛtichandrikā*, p. 470.)

40. नारद 6. 3.] भृतावनिश्चितायां तु दशभागमवाप्नुयुः ।
लाभगोवीर्यशस्यानां वणिग्गोपकृषीबलाः ॥

40. If the amount of wages has not been previously settled, the trader, the cowherd and the agriculturist, servant shall receive the tenth part of the profit, the cow-product and the grains respectively.—(Nārada, 6. 3; in *Vivādaratnākara*, p. 156.)

NOTES

'*Cow-Product*'—The milk of the cow tended by him.—(*Vivādachintāmaṇi*, p. 74; and *Smṛtichandrikā*, p 470.)

'*Profit*'—that has accrued from the transaction in which the servant has helped.—(*Vivādachintāmaṇi*. p. 74.)

41. याज्ञवल्क्य 194.] दाप्यस्तद्दशमं भागं वणिज्यापशुसस्यतः ।
अनिश्चित्य भृतिं यस्तु कारयेत् स महीभृता ॥

41. If a master gets work done without having previously settled the wages, the king shall make him pay to the servant the tenth part of the profit derived from the trade or the cattle or the grain-produce.—(Yājña. 2. 194.)

42. बृहस्पति 16. 12.] त्रिभागं पञ्चभागं वा गृह्णीयात् सीरवाहकः ।

42. The ploughman shall receive the third or the fifth part of the produce of the land cultivated.—(Bṛhaspati, 16. 12; in *Vivādaratnākara*, p. 157.)

43. बृहस्पति 16. 13.] भक्ताच्छादभृतः सीरभागं गृह्णीत पञ्चमम् ।
जातशस्यात् त्रिभागं तु प्रगृह्णीतोपधाभृतः ॥

43. The ploughman who is receiving food and clothing from the master shall receive the fifth part of the produce of the land; if he has been engaged on the understanding that all that he is to receive is a share of the produce of his labours, then he should receive the third part of the produce.—(Bṛhaspati, 16. 13; in *Vivādaratnākara*, p. 158.)

NOTES

'*If he has, etc.*'—The rendering above given is in accordance with the explanation given by *Vivādaratnākara* and *Vivādachintāmaṇi*; according to *Smṛtichandrikā*, this stands for all labourers other than those receiving food and clothing.

44. वृद्धमनु] समुद्रयानकुशला देशकालार्थदर्शिनः ।
नियच्छेयुर्भृतिं यान्तु सा स्यात् प्रागकृता यदि ॥

44. Where no wages have been settled previously, the labourer shall receive the wages fixed by persons expert in sea-voyage (trading) and experienced in regard to time and place.—(Vṛddha Manu in *Vivādaratnākara*, p. 158.)

NOTES

Where no wages have been previously settled, the labourer shall be paid in accordance with the work done and the exigencies of the time; the agricultural labourer receiving the tenth part of the crops, the cowherd, the tenth part of the butter, the tradesman-labourer, the tenth part of the merchandise dealt with by him.—(*Arthashāstra*, 3. 13.)

'*Sea-voyage*'—stands for *trading in general* (*Vivādaratnākara*, p. 158;—for people expert in matters regarding trades (*Vivādachintāmaṇi*, p. 75).

45. याज्ञवल्क्य 2. 195.] देशं कालं च योऽतीयाल्लाभं कुर्याच्च योऽन्यथा।
तत्र स्यात् स्वामिनश्छन्दोऽधिकं देयं कृतेऽधिके ॥

45. If the servant disregards the exigencies of time and place, and reduces the profits of the trade,—the employer may pay him what little he likes; if however the servant secures greater profits, he shall receive more than the stipulated wages.—(Yājña. 2. 195.)

46. याज्ञवल्क्य 2. 196.] यो यावत्कुरुते कर्म तावत्तस्य च वेतनम् ।
उभयोरप्यसाध्यं चेत्, साध्ये कुर्याद्यथाश्रुतम् ॥

46. [In the case of two men being employed to do a work]: if the work is such as cannot be completed by the two men,—and is therefore left incomplete, each shall receive wages according to the amount of the work done by him. If the work is such as can be, and has been, accomplished by the two persons, they shall receive the stipulated wages.—(Yājña. 2. 196.)

EXPLANATION

'*According to, etc.*'—The exact amount payable to each being settled by an arbitrator.—(*Mitākṣarā.*)

47. आपस्तम्ब] उद्रसतः कीनाशस्य दण्डेन ताडनं तथा पशुपालस्यावरोधनं चास्य पशूनाम् ।

47. If the cultivator runs away and the work of the employer suffers in consequence, he should be beaten with sticks; similarly in the case of the herdsman running away; in the latter case, his cattle also should be impounded.—(Āpastamba in *Vivādaratnākara*, p. 158.)

48. नारद 6. 4.] कर्मोपकरणं चैषां क्रियां प्रति यदाहितम् ।
आप्तभावेन तद्रक्ष्यं न जैह्मेन कथञ्चन ॥

48. The implements of work, and whatever else may have been entrusted to them for their work,—all these the employee shall use with due care and not dishonestly.—(Nārada, 6. 4.)

49. नारद 6. 5.] कर्माकुर्वन् प्रतिश्रुत्य कार्योऽदत्वा भृतिं बलात् ।
भृतिं गृहीत्वाऽकुर्वाणो द्विगुणां भृतिमाहरेत् ॥

49. If, after having promised to do some work, the labourer fails to perform it, he should be compelled to do it and receive his wages. If he does not perform it, after having received the wages, he must pay back twice the amount of the wages received.—(Nārada, 6. 5; in *Vivādaratnākara*, p. 158.)

NOTES

If after having received the wages, a labourer fails to do the work, he shall be fined 12 *Paṇas*, and shall be compelled to do the work.—(*Arthashāstra*, 3.14.)

50. बृहस्पति 16. 15.] गृहीतवेतनः कर्म न करोति यदा भृतः ।
समर्थश्चेद्दमं दाप्यो द्विगुणं तच्च वेतनम् ॥

50. If, after having received his wages, an employee fails to do the work, though quite fit to do it,—he shall be compelled to pay twice as much as his wages as fine to the king, and to refund the wages to the employer.—(Bṛhaspati, 16. 15; in *Vivādaratnākara*, p. 159.)

51. बृहस्पति 16. 14.] भृतको यस्तु कुर्वीत स्वामिनः शाठ्यमण्वपि ।
भृतिहानिमवाप्नोति ॥

51. Should an employee fail in the performance of ever so small a part of his employer's work,—he forfeits his wages.—(Bṛhaspati, 16. 14; in *Vivādaratnākara*, p. 159.)

52. कात्यायन] कर्मारम्भं तु यः कृत्वा सर्वं नैव तु कारयेत् ।
बलात्कारयितव्योऽसावकुर्वन् दण्डमर्हति ॥

52. If an employee commences a work but fails to accomplish it,—he should be compelled to accomplish it; if he does not do it, he should be punished.—(Kātyāyana in *Vivādaratnākara*, p. 160; in *Vīramitrodaya*, p. 416.)

53. वृद्धमनु] स चेन्न कुर्यात् तत्कर्म प्राप्नुयाद् द्विशतं दमम् ॥

53. [Having promised to do a work, if an employee fails to do it, he should be compelled to do it.] If he does not do it, he should be fined 200 *Paṇas*.—(Vṛddha Manu in *Vivādachintāmaṇi*, p. 75.)

NOTES

This refers to cases where the man leaves off after commencing the work,—says *Vivādachintāmaṇi* (p. 75).

54. मनु 8. 215.] भृतोऽनार्तो न कुर्याद्यो दर्पात् कर्म यथोदितम् ।
स दण्ड्यः कृष्णलान्यष्टौ न देयं चास्य वेतनम् ॥

54. If a hireling, without being ill, does not perform the stipulated work, through arrogance,—he should be fined eight *kṛṣṇalas*, and should also forfeit his wages.—(Manu, 8. 215; and Bṛhaspati, 16.16.)

EXPLANATION

'*Kṛṣṇalas*'—of gold, silver or copper; in accordance with the nature of the work and other circumstances of the case.—In a case where a mechanic approaches a rich man and prevails upon him to undertake the digging of a tank, or the building of a temple, and promises to supervise the work and see it through,—but subsequently slips off,—then he should make good all the loss of money and energy that the employer may have suffered.—The law laid down here is meant for cases where the employee has been engaged on fooding, for six months or a year, to do a specified work.—(*Medhātithi.*)

This refers to cases where the work has been left only half-done.—If the wages have been already paid, they should be recovered.—(*Parāsharamādhava*, p. 233 and *Smṛtichandrikā*, p. 473.)

This refers to cases where wages have been received, but work has not been begun,—says *Vivādaratnākara* (p. 160); and it adds that '*illness*' here includes all those acts of God and King which would stand in the way of the work being done.

55. मनु 8. 217.] यथोक्तमार्तः स्वस्थो वा यस्तत् कर्म न कारयेत् ।
न तस्य वेतनं देयमल्पोनस्यापि कर्मणः ॥

55. When a man, sick or well, does not get the stipulated work done, he shall not receive his wages,—even though the work be only slightly incomplete.—(Manu, 8. 217.)

NOTES

If the employer does not dismiss the man, when he has fallen ill, after having paid off his wages for the part of the work done,—then he should, after recovery, be made to finish the work. But if the employer should say 'I have no work for you,' then he should receive his dues in accordance with the part of the work done by him.—(*Medhātithi.*)

The man, on recovery, may finish the work himself, or have it done by some one else.—(*Vīramitrodaya*, p. 417.)

If the labourer is physically unable to do the work,—or the work is too degrading—or he is ill or in trouble,—and is consequently unable either to do the work or to get it done, he is not to be punished; but he shall refund the wages to the employer who will get his work done by others.—(*Arthashāstra*, 3. 14.)

56. मनु 8. 216.] आर्तस्तु कुर्यात् स्वस्थः सन् यथाभाषितमादितः ।
सुदीर्घस्यापि कालस्य लभेतैव वेतनम् ॥

56. If the employee who had been ill, on recovery, completes the work as originally stipulated, he shall receive his wages,—even though it be after the lapse of a long time. —(Manu, 8. 216.)

57. नारद] कालेऽपूर्णे त्यजन् कर्म भृतेर्नाशमवाप्नुयात् ।
स्वामिदोषादपक्रामन् यावत्कृतमवाप्नुयात् ॥

57. If a hireling abandons his work before the lapse of the stipulated time, he forfeits his wages.—But if he leaves through some fault of his employer, then he should be paid for such portion of the work as he may have already done. —(Nārada in *Smṛtichandrikā*, p. 474.)

EXPLANATION

'*Fault of the master*'—such, for instance, as bad temper leading to his abusing the man without reason.—(*Vīramitrodaya*, p. 417.)

If there has been an agreement between the employer and the employee to the effect that the employer shall not engage another labourer and the employee shall not do the work of another person,—then if either party fail to keep this contract, he shall be fined 12 *Paṇas*.—(*Arthashāstra*, 3. 14.)

58. वृद्धमनु] प्रमादान्नाशितं दाप्यः समं, द्विद्रोहनाशितम् ॥

58. If an employee destroys anything through carelessness, he should be made to make it good; if he does it through malice, he should be made to pay double the price of what is damaged.—(Vṛddha Manu in *Vivādaratnākara*, p. 162; *Vivādachintāmaṇi*, p. 76, *Vīramitrodaya*, p. 418; and *Smṛtichandrikā*, p. 475.)

59. वृद्धमनु] न तु दाप्यो हृतं चौरैर्दग्धमूढं जलेन वा ।

59.—But he shall not be held liable if the article has been stolen by thieves, or burnt by fire, or washed away by floods.—(Vṛddha Manu in *Vivādaratnākara*, p. 162.)

60. विष्णु 5. 155-56.] तद्दोषेण यद्विनश्येत तत् स्वामिने देयम्—
अन्यत्र राजदैवोपघातात् ॥

60. What has been destroyed by the hireling through his carelessness shall be made good by him; unless the damage has been due to an act of God or King.—(Viṣṇu, 5. 155-156.)

61. नारद 6. 9.] भाण्डं व्यसनमागच्छेद्यदि वाहकदोषतः ।
दाप्यो यत्तत्र नष्टं स्यात् दैवराजकृताद्दते ॥

61. If the merchandise has been damaged by the carrier's fault, he shall have to make good the loss, except when it has been due to an act of God or of the King.—(Nārada, 6. 9 ; and Yājña. 2.197.)

62. नारद 6. 8.] प्रस्थानविघ्नकृच्चैव प्रदाप्यो द्विगुणां भृतिम् ।

62. If the carrier raises difficulties at the time of starting, he should be made to pay double the amount of his wages.—(Nārada, 6. 8; and Kātyāyana in *Smṛtichandrikā*, p. 475; Yājña. 2. 197.)

NOTES

The 'carrier' is mentioned only by way of illustration; the rule applies to all hirelings,—says *Smṛtichandrikā* (p. 475).

63. याज्ञवल्क्य 2. 198.] प्रक्रान्ते सप्तमं भागं चतुर्थं पथि सन्त्यजन् ।
भृतिमर्धपथे सर्वां प्रदाप्यस्त्याजकोऽपि च ॥

63. If the carrier abandons the stipulated work after starting, he should be made to pay, as fine, the seventh part of his wages; if he abandons it on the way, he should be made to pay, as fine, the fourth part of his wages; if he abandons it midway, he should be made to pay, as fine, the entire wages.—(Yājña. 2.198.)

NOTES

What the 'starting,' 'on the road' and 'midway' refer to is the difficulty or otherwise of securing another carrier; if the carrier engaged goes away at a place or time where another is easily available, then he has to pay less than what he has to pay if he goes away where and when it is difficult to procure another. This same rule applies also to the master, who has to suffer the same penalties if he dismisses the carrier 'after starting' and so forth.—What is said below regarding the carrier having to pay double the amount of his wages refers to cases where the man goes away when and where it is absolutely impossible to procure another and when the occasion is a specially important and auspicious one.—(*Vivādaratnākara,* p. 163; and *Mitākṣarā.*)

This refers to cases where the abandoning is not due to illness.—(*Mitākṣarā.*)

64. नारद 5. 6.] भृतिषड्भागमाभाष्य पथि युग्यं परित्यजन् ।

64. If a carrier abandons merchandise which he had agreed to carry to its destination, he shall pay the sixth part of his wages.—(Nārada, 5. 6; in *Vivādaratnākara,* p. 164.)

65. याज्ञवल्क्य 2. 193.] गृहीतवेतनः कर्म त्यजन् द्विगुणमावहेत् ।
अगृहीते समं दाप्यो भृत्यैरक्ष्य उपस्करः ॥

65. If a hireling gives up his work after he has received the wages, he should pay back double the amount of the wages received;—if he gives it up before he has been paid, then he should pay to the employer the amount of the stipulated wages. In any case the labourer shall keep the implements carefully. —(Yājña. 2. 193.)

66. विष्णु 5. 153-54.] भृतकश्चापूर्णे काले भृतिं त्यजन् सकलमेव
मूल्यं जह्यात् । राज्ञे च पणशतं दद्यात् ॥

66. A hireling who abandons his work before the stipulated term has expired shall forfeit the whole amount of the stipulated wages,—and shall pay a fine of 100 *Paṇas* to the king.—(Viṣṇu, 5. 153-154.)

67. वृद्धमनु] यः कर्मकाले सम्प्राप्ते न कुर्याद्विघ्नमाचरेत् ।
उद्धृत्यान्यस्तु कार्यः स्यात् स दाप्यो द्विगुणां भृतिम् ॥

67. If at the time of the actual performance of the stipulated work, the labourer should give it up, or create

difficulties, he should be made to pay double the amount of the stipulated wages.—(Vṛddha Manu in *Vivādaratnākara*, p. 163.)

68. बृहस्पति 16. 17.] प्रभुणा विनियुक्तः सन् भृतको विदधाति यत्।
तदर्थमशुभं कर्म स्वामी तत्रापराध्नुयात्॥

68. When a servant commits an improper act under orders from his employer, and for the benefit of the latter, the latter shall be held responsible for it.—(Bṛhaspati, 16. 17, in *Vivādaratnākara*, p. 162.)

NOTES

'*Improper act.*'—Such as theft (*Vivādaratnākara*, p. 162); such as destroying a boundary with a view to enlarging the employer's fields.—(*Smṛtichandrikā*, p. 476.)

69. बृहस्पति 16. 18.] कृते कर्मणि यः स्वामी न दद्याद् वेतनं भृतेः।
राज्ञा दापयितव्यः स्यात् विनयं चानुरूपतः॥

69. If the employer does not pay the stipulated wages after the work has been completed, he shall be compelled by the king to pay it, and also a proportionate fine.—(Bṛhaspati, 16. 18; in *Vivādaratnākara*, p. 165.)

NOTES

If the employer does not pay the wages, he shall be fined the tenth part of the wages due, or 6 *Paṇas*. If he lies regarding payment, his fine shall be doubled.—(*Arthashāstra*, 3.13.)

70. कात्यायन] त्यजेत्पथि सहायं यः श्रान्तं रोगार्तमेव वा।
प्राप्नुयात् साहसं पूर्वं ग्रामेऽत्र्यहमपालयन्॥

70. If the employer abandons on the way a servant who is tired or ill,—and does not wait in a village for three days in order to enable him to recover,—he should be fined the first amercement.—(Kātyāyana in *Smṛtichandrikā*, p. 477; and *Vīramitrodaya*, p. 421.)

71. नारद] अददत् कारयित्वा तु सोदयाम्भृतिमावहेत्।

71. If the employer fails to pay the servant accompanying him on a journey, the stipulated wages,—he shall be made to pay it with interest.—(Nārada in *Vivādaratnākara*, p. 164.)

72. विष्णु 5. 157.] स्वामी चेद् भृतमपूर्णे काले जह्यात् तस्य सर्वमेव मूल्यं-दद्यात् पणशतं च राज्ञे—अन्यत्र भृतदोषात् ।

72. If an employer dismisses his hireling before the expiry of the term, he shall pay him his entire wages; and he shall pay a fine of 100 *Paṇas* to the king, unless the hireling has been at fault.—(Viṣṇu, 5. 157-159.)

NOTES

'*Fault.*'—Such as stealing and the like.—(*Smṛtichandrikā*, p. 477.)

73. याज्ञवल्क्य 2. 198.] प्रक्रान्ते सप्तमं भागं चतुर्थं पथि सन्त्यजन् ।
भृतिमर्धपथे सर्वां प्रदाप्यस्त्याजकोऽपि च ॥

73. If the employer abandons a hireling after setting out, he shall pay the seventh part of the wages in addition to the stipulated wages; if he abandons him on the way, he should pay the fourth part of the wages in addition to the wages; if midway, then he shall pay double the amount of the wages.—(Yājña. 2. 198.)

NOTES

The rule regarding abandoning in the way refers to cases where the employer gives up the hireling before he has sold all his merchandise.—(*Smṛtichandrikā*, p. 477.)

Under 63 above this text has been taken as applying to the hireling abandoning the work. Here it is made applicable to the employer abandoning the hireling.

74. वृद्धमनु] पथि विक्रीय तद्भाण्डं वणिग् भृत्यं त्यजेद्यदि ।
अगतस्यापि देयं स्याद् भृतेरर्धं लभेत सः ॥

74. If the employer abandons the hireling after having sold his merchandise, before reaching the stipulated destination, he should pay also for that part of the journey which has not been traversed; but at the rate of only half the stipulated wages.—(Vṛddha Manu in *Vivādachintāmaṇi*, p. 77.)

75. कात्यायन] यदा च पथि तद् भाण्डमासिद्ध्येत ह्रियेत वा ।
यावानध्वा गतस्तेन प्राप्नुयात् तावतो भृतिम् ॥

75. If the merchandise be confiscated or stolen on the way, the carrier is to receive his wages only for the distance that has been already traversed.—(Kātyāyana in *Parāsharamādhava*, p. 235.)

76. नारद 6. 7.] अनयन् भाटयित्वा तु भाण्डवान् यानवाहने ।
दाप्यो भृतेश्चतुर्भागं सर्वमर्धपथे त्यजन् ॥

76. If a merchant, after having engaged a conveyance and beasts of burden, does not take them,—he shall be made to pay a fourth part of the hire; but the whole of it, if he leaves them half way.—(Nārada, 6. 7; in *Vivādaratnākara*, p. 164.)

77. वृद्धमनु] यो भाटयित्वा शकटं नीत्वा चान्यत्र गच्छति ।
भाटं न दद्याद् दाप्यः स्यात् अरूढस्यापि भाटकम् ॥

77. If a man, having engaged a cart, and used it for a part of the journey, goes away without paying the hire,—he should be made to pay the hire also for that part of the journey which has not been covered.—(Vṛddha Manu in *Smṛtichandrikā*, p. 478.)

78. कात्यायन] हस्त्यश्वगोखरोष्ट्रादीन् गृहीत्वा भाटकेन यः ।
नार्पयेत् कृतकृत्यार्थः स तु दाप्यः सभाटकम् ॥

78. After having engaged an elephant, a horse, an ox, a mule or a camel,—if a man fails to pay the hire, after his work has been accomplished,—he should be made to pay the hire.—(Kātyāyana in *Smṛtichandrikā*, p. 479.)

79. कात्यायन] गृहवार्यापणादीनि गृहीत्वा भाटकेन यः ।
स्वामिने नार्पयेद्यावत् तावद्दाप्यः स भाटकम् ॥

79. Having hired a house or a water-vessel or such things,—if a man does not restore them, after use, to the owner, he should be made to pay the hire till the time that he may restore it.—(Kātyāyana in *Smṛtichandrikā*, p. 479.)

80. नारद] स्तोमवाहीनि भण्डानि पूर्णकालेऽप्युपानयेत् ।
ग्रहीतुरावहेद् भग्नं नष्टं वाऽन्यत्र सम्प्लवात् ॥

80. If one has obtained utensils on hire, he should return them to the owner at the expiry of the stipulated time. If there has been any damage or loss which has not been due to their being mixed up with other utensils, the hirer is held responsible for it.—(Nārada in *Vivādachintāmaṇi*, p. 80.)

81. नारद 6. 20.] परभूमौ गृहं कृत्वा स्तोमं कृत्वा वसेत्तु यः ।
स तद् गृहीत्वा निर्गच्छेत् तृणकाष्ठेष्टकादिकम् ॥

81. If a man has built a house on ground belonging to another and lives in it, paying rent to the land-owner,—he may take away with him, when he leaves the place, the thatch, the timber, the bricks and other building materials.—(Nārada, 6. 20; in *Vivādachintāmaṇi*, p. 79.)

82. नारद 6. 21.] स्तोमं विना वसित्वा तु परभूमावनिच्छतः ।
निर्गच्छन् तृणकाष्ठानि न गृह्णीयात् कथञ्चन ॥

82. If a man has been residing on ground belonging to another, without paying rent and against that person's wish,—he shall by no means take with him, on leaving, the building materials; all which he shall surrender to the owner of the land.—(Nārada, 6. 21; in *Vivādachintāmaṇi*, p. 79.)

83. व्यास] स्नेहेन तु चिरं कालं मन्दिरं कुरुते तु यः ।
निर्गच्छतस्तस्य दारु दत्तस्तोमस्य नान्यथा ॥

83. If a man has built a house for himself, through his friendship with the landowner, when he leaves it, he shall take the building materials only if he has paid rent for the land.—(Vyāsa in *Smṛtichandrikā*, p. 480.)

NOTES

The *Arthashāstra* (3. 13-14) has the following rules on the subject:

(*a*) In danger of being washed away by a flood or burnt or killed by wild animals or robbers,—if one calls for help and promises, as the price, of his safety, either his entire property or his wife or child—and help being rendered to him, he is saved, he shall pay to his saviour whatever experts may fix as the proper recompense.

(*b*) The rules laid down in regard to an individual employee are also applicable to a corporation of employees.

(*c*) The engagement of a body of employees continues binding for seven days;—without the employer's permission the corporate body shall not dismiss any member or admit any new ones. If they do, they should be fined 24 *Paṇas*.

CHAPTER XI

OWNER AND KEEPER OF CATTLE

WAGES OF THE CATTLE-KEEPER

1. नारद 6. 10.] गवां शताद्वत्सतरी धेनुः स्याद् द्विशतात् भृतिः ।
प्रतिसंवत्सरं गोपे सन्दोहश्चाष्टमेऽहनि ॥

1. For tending a hundred cows, the keeper shall get as wages a heifer annually ; for tending two hundred cows, he shall get a milch cow every year ; and he shall get the milk of all the cows tended by him on every eighth day.—(Nārada, 6. 10 ; in *Vivādaratnākara*, p. 170.)

NOTES

'*Heifer*'—a she-calf *three* years old (*Vivādachintāmaṇi*, p. 80),—two years old.—(*Vivādaratnākara*, p. 170; *Parāsharamādhava*, p. 263 ; and *Vīramitrodaya*, p. 442.)

'*The milk of all the cows*'—is meant to go only with the keeper of 200 cows, according to *Madanaratna*; to both the keepers—of 100 and of 200—according to *Kalpataru*, says *Vīramitrodaya*, p. 443, which itself favours the former view.

This rule applies to cases where among the cows tended, some are milch and some dry; where all the cows are milch, the wages are as below, under (3).—(*Vivādachintāmaṇi*, p. 80.)

This rule, as also the next, refers to cases where the wages payable have not been previously settled.—(*Smṛtichandrikā*, p. 483; *Parāsharamādhava*, p. 263 ; and *Vīramitrodaya*, p. 433.)

2. बृहस्पति.] तथा धेनुभृतः क्षीरं लभेतास्याष्टमेऽखिलम् ।

2. The keeper 'supported by milch cows' should get the milk of all the cows every eighth day.—(Bṛhaspati in *Smṛtichandrikā*, p. 483.)

NOTES

The keeper of 200 cows is meant here—says *Vīramitrodaya* (p. 443).

3. मनु 8. 231.] गोपः क्षीरभृतो यस्तु स दुह्याद्दशतो वराम्।
गोस्वाम्यनुमते भृत्यः सा स्यात् पालेऽभृते भृतिः ॥

3. If the hired cattle-keeper is one paid with milk, he shall, with the owner's permission, milk the best of ten cows; this shall be the keeper's wages, if he receives no other wages. –(Manu 8. 231.)

NOTES

'*Best*'—according to another reading, the '*worst.*'

The wages are to be commensurate with the labour involved in the tend ing. If the man receives nothing else in the shape of subsistence, he shall take the milk of one cow. The exact wages in each case shall be determined according to this rate. Thus for the work of looking after milch and non-milch cows, heifers, bulls and calves, the owner shall apportion to the keeper sometimes the third, and sometimes the fourth, part of the entire milk-produce.— This is a mere indication; in each individual case, local custom has to be followed.—'*With the owner's permission*'—If he takes the milk without permission, he shall be punished.—(*Medhātithi.*)

The wages mentioned here are for the tending of ten milch cows; for a larger or smaller number, the wages may be fixed accordingly.—(*Smṛti-chandrikā*, p. 483.)

'*No other wages*,'—in the shape of food and clothing.—This rule applies to cases where all the cows tended are milch ones.—(*Vivādachintāmaṇi*, p. 80.)

The '*keeper*' meant here is one tending *ten milch cows.*—(*Vīra.*, p. 443.)

If some of the cows are dry, the wages payable are to be determined on the basis of the cash-value of their milk.—(*Parāsharamādhava*, p. 263.)

4. विष्णु 5. 139.] अननुज्ञातो दुहन् पञ्चविंशतिकार्षापणम् ॥

4. If he milks a cow without the owner's permission, he shall pay a fine of 25 *Kārṣāpaṇas*.—(Viṣṇu, 5. 139; in *Vivāda-chintāmaṇi*, p. 82.)

DUTIES OF THE OWNER AND THE KEEPER

5. नारद 6. 11.] उपानयेद् गां गोपाय प्रत्यहं रजनीक्षये।
चीर्णाः पीताश्च ता गोपः सायाह्ने प्रत्युपानयेत् ॥

5. The owner shall make over the cows to the keeper every morning; and the keeper shall bring them back to the owner in the evening, after they have eaten and drunk.—(Nārada, 6. 11; in *Vivādaratnākara*, p. 171.)

NOTES

'*Cows*' —stands for cattle in general.—(*Smṛtichandrikā*, p. 484.)

'*Evening*'—stands for the time before sunset.—(*Vivādaratnākara*, p. 171.)

6. याज्ञवल्क्य 2. 164.] यथार्पितान् पशून् गोपः सायं प्रत्यर्पयेत्तथा ।

6. The keeper shall bring back and restore to the owner the cattle exactly in the same condition in which they had been made over to him.—(Yājña., 2. 164a.)

7. याज्ञवल्क्य 2. 164.] प्रमादमृतनष्टांश्च प्रदाप्यः कृतवेतनः ॥

7. If any cattle die or get lost through his carelessness, the hired keeper shall be made to make it good.—(Yājña., 2.164b.)

8. मनु 8. 233.] विघुष्य तु हृतं चौरैर्न पालो दातुमर्हति ।
यदि देशे च काले च स्वामिनः स्वस्य शंसति ॥

8. The keeper shall not have to make good what has been taken away by thieves openly,—if he informs his own master of it at the proper place and time.—(Manu, 8.233; Nārada, 6.16.)

NOTES

'*Openly*'—with beat of drums; this is meant to indicate the helplessness of the keeper;—'*at the proper time*,'—*i.e.*, immediately after the occurrence;—'*at the proper place*,'—wherever the master may happen to be;—if the keeper gives the information to the master long after the cows have been taken away, the blame shall lie with him.—(*Medhātithi*.)

9. व्यास.] पालग्राहे ग्रामघाते तथा राष्ट्रस्य विप्लवे ।
यत् प्रणष्टं हृतं वा स्यान्न पालस्तत्र किल्विषी ॥

9. The keeper is not to be held responsible, if cattle is lost or stolen,—either after the keeper himself has been made captive, or when the whole village has been attacked, or when there has been change of Government.—(Vyāsa in *Vivādaratnākara*, p. 172.)

10. मनु 8. 232.] नष्टं विनष्टं कृमिभिः श्वहतं विषमे मृतम् ।
हीनं पुरुषकारेण प्रदद्यात् पाल एव तु ॥

10. The keeper alone shall make good what has strayed, or been destroyed by worms, or killed by dogs, or has perished in an unsafe place,—if it was left without human aid.—(Manu, 8. 232 ; Nārada, 6. 12.)

NOTES

'*Dogs*'—this stands for jackals, wolves, tigers and other wild animals.—*Human aid*'—such as remaining near the cattle, lighting fires for keeping away wild animals and so forth. In a case where the keeper himself is on the point of death and has been unable to scare away the animals, or where the cattle themselves, stampeding, have fallen into a pit, and so on,—the keeper cannot be held responsible.—(*Medhātithi.*)

'*Naṣṭam*' (strayed) has been explained as 'stolen' by *Vivādachintāmaṇi* (p. 81).

11. नारद 12-13.] स्याच्चेद्गोव्यसनं गोपो व्यायच्छेत्तत्र शक्तितः ।
अशक्तस्तूर्णमागत्य स्वामिने तन्निवेदयेत् ॥
अव्यायच्छन्नविक्रोशन् स्वामिने वाऽनिवेदयन् ।
वोढुमर्हति गोपस्तां विनयं चैव राजनि ॥

11. If a cattle meet with an accident, the keeper shall struggle to save it to the best of his power ; if he is unable to rescue it, he shall immediately go to announce it to the master. Should he neither struggle to save it, nor raise a cry, nor announce it to the master, he must make good the value of the cow to the owner and also pay a fine to the king.—(Nārada, 6. 12-13.)

12. याज्ञवल्क्य 2. 165.] पालदोषाद् विनाशे तु पाले दण्डो विधीयते ।
अर्धत्रयोदशपणः स्वामिने द्रव्यमेव च ॥

12. In the event of the cattle being destroyed on account of some fault of the keeper's, punishment shall be inflicted on the keeper, in the shape of thirteen *Paṇas* and a half ; and he shall also make good the loss to the owner.—(Yājña., 2. 165.)

NOTES

'*Ardhatrayodashapaṇaḥ*'—This has been interpreted to be 13½ *Paṇas* by *Aparārka* and *Mitākṣarā;* but 12½ by *Parāsharamādhava* (p. 263) and *Vīramitrodaya* (p. 445).

Make good'—by paying the price of the animal, as computed by impartial arbitrators.—(*Mitākṣarā.*)

13. विष्णु 5. 137-138.] दिवा पशूनां वृकाद्युपघाते पाले त्वनायति पालदोषः। विनष्टपशुमूल्यं च स्वामिने दद्यात्।

13. Cattle being attacked during day-time by wolves or other wild animals, if the keeper does not go to repel the attack, the blame shall lie with him; he shall pay to the owner the value of the cattle that has perished.—(Viṣṇu, 5. 137-138; in *Vivādaratnākara*, p. 174.)

14. मनु 8. 230.] दिवा वक्तव्यता पाले रात्रौ स्वामिनि तद्गृहे।
योगक्षेमेऽन्यथा चेत्तु पालो वक्तव्यतामियात्॥

14. Responsibility for the safe keeping of the cattle during the day rests with the keeper; and during the night, with the owner, if in his own house; if outside, the keeper should be responsible during the night also.—(Manu, 8. 230.)

NOTES

'*If outside*'—*i.e.*, if the cattle have not been brought to the house during the night, and have been kept in the pastures.—(*Medhātithi.*)

15. मनु 8. 235.] अजाविके तु संरुद्धे वृकैः पाले त्वनायति।
यां प्रसह्य वृको हन्यात् पाले तत्किल्विषं भवेत्॥

15. When goats and sheep have been surrounded by wolves and the keeper does not come forward to rescue them,—in the event of the wolf killing any, the blame shall lie with the keeper.—(Manu, 8. 235; Nārada, 6. 15.)

NOTES

Though only 'goats and sheep' have been mentioned here, young calves also are meant to be included here; as for larger animals, they cannot be 'surrounded by wolves.'—(*Medhātithi.*)

16. मनु 8. 236.] तासां चेदवरुद्धानां चरन्तीनां मिथो वने।
यामुत्पत्य वृको हन्यान्न पालस्तत्र किल्विषी॥

16. When however the goats and sheep are grazing together in herds in the forest, duly protected,—if a wolf suddenly emerging from a thicket, pounces upon one and kills it,—the keeper is not to blame.—(Manu, 8. 236.)

NOTES

If the animals are allowed to go and roam about singly, and not kept herded together, —the keeper is to blame.—(*Medhātithi.*)

17. मनु 8. 234.] कर्णौ चर्म च बालांश्च वस्तिस्नायूनि रोचनाम् ।
पशुषु स्वामिनां दद्यान्मृतेष्वङ्कांश्च दर्शयेत् ॥

17. In the case of animals dying, the keeper shall make over to the owner, its skin, ears, tails, bladder, tendons and the concrete bile, pointing out the distinctive features.—(Manu, 8. 234.)

18. नारद.] मृतेषु च विशुद्धिः स्यात् बालशृङ्गादिदर्शनात् ।

18. In the case of animals dying, the keeper becomes absolved from blame by presenting their tails, horns and such other things.—(Nārada in *Vivādaratnākara*, p. 175.)

19. ब्रह्मपुराण.] गृहीतमूल्यो गोपालो गां त्यक्त्वा निर्जने वने ।
ग्रामचारी नृपैर्वध्यः ।
गोपालहस्तसंस्था गौस्तद्दोषान्म्रियते यदि ।
तदा स एव दण्ड्यः स्याच्छुल्कं दाप्यस्तु गोपते: ॥

19. If a hired herdsman abandons an ailing cow in the solitary forest and returns to the village, the king shall inflict on him corporal punishment.—If a cow in charge of a herdsman dies through his fault, he should be punished and should pay its value to the owner of the cow.—(*Brahmapurāṇa* in *Vivādaratnākara*, p. 174.)

20. ब्रह्मपुराण.] यदा रोगादिदोषेण म्रियते गौर्गृहे क्वचित् ।
तदा स गोपतिर्दण्ड्यो दत्त्वा गोपालवेतनम् ॥

20. If a cow dies in the owner's house by a disease (which could be cured), the owner should be punished and be made to pay the wages to the keeper.—(*Brahmapurāṇa* in *Vivādaratnākara*, p. 174.)

PASTURE LANDS, FENCES

21. याज्ञवल्क्य 2. 166.] ग्रामेच्छया गोप्रचारो भूमिराजवशेन वा ॥

21. Land should be reserved for pasture, either according to the wish of the villagers, or under orders of the king of the land.—(Yājña., 2. 166.)

NOTES

'*Reserved*'—left uncultivated.—(*Mitākṣarā.*)

22. याज्ञवल्क्य 2. 167.] धनुःशतं परीहारो ग्रामक्षेत्रान्तरं भवेत् ।
द्वे शते खर्वटस्य स्यात् नगरस्य चतुःशतम् ॥

22. Between a village and the cultivated lands there should be left on all sides a belt of uncultivated land to the extent of 100 'bow-lengths' in width; 200 'bow-lengths' round a market-town; and 400 'bow-lengths' round a city.—(Yājña., 2. 167.)

NOTES

'*Market town.*'—The term in the original is '*Kharvata*'; it has been explained by *Madanaratna* (quoted in *Vīra.*, p. 446 and *Mayūkha*, p. 220) as 'a village inhabited by cultivators and also artisans,' as 'a group of house-holds larger than a village and smaller than a city' by *Aparārka*; and by *Mitākṣarā* and *Mādhavāchārya* (quoted in *Vīra.*, p. 446) as '*Prachurakaṇṭakasantāna-grāmaḥ*,' which is explained in *Bālambhatti* as 'a village abounding in thorny trees.'

23. मनु 8. 237.] धनुःशतं परीहारो ग्रामस्य स्यात् समन्ततः ।
शम्यापातास्त्रयो वापि त्रिगुणो नगरस्य तु ॥

23. Around the village, there should be a pasture-ground, 400 'bow-lengths' or three 'stick-throws' in width; but three times this round a city.—(Manu, 8. 237.)

NOTES

'*Bow-lengths.*'—One 'bow-length' is 4 cubits or 6 feet.—'*stick-throws*,' a stick should be thrown with great force, and from the point where it falls, it should be thrown again; when this has been done three times, that shall represent the width of the pasture-ground.—(*Medhātithi.*)

Around the village a plot of land 100 'bow-lengths' in width shall be fenced round by means of pillars; and this plot shall be used as Pasture-Land for cattle.—(*Arthashāstra*, 3, 10.)

24. मनु 8. 239.] वृतिं तत्र प्रकुर्वीत यामुष्ट्रो नावलोकयेत् ।
छिद्रं च वारयेत्सर्वं श्वसूकरमुखानुगम् ॥

24. Round the field one should set up a fence which the camel may not overlook, and should shut up every opening therein through which the head of a dog or a boar could be thrust.—(Manu, 8. 239.)

25. नारद.] पथि क्षेत्रे वृतिः कार्या यामुष्ट्रो नावलोकयेत् ।
न लङ्घयेत् पशुर्नाश्वो न भिन्द्याद् यां च सूकरः ॥

25. Round the field located near a pathway, one should set up a fence which the camel cannot overlook, which cattle or horse cannot jump over and which cannot be broken through by a boar.—(Nārada in *Aparārka*, p. 770.)

26. कात्यायन.] अजातेष्वेव सस्येषु कुर्यादावरणं महत् ॥

26. A large fence should be set up before the seeds have germinated.—(Kātyāyana in *Aparārka*, p. 770.)

27. कात्यायन.] क्षेत्रारामविवीतेषु गृहेषु पशुपादिषु ।
ग्रहणं तत्प्रविष्टाना ताडनं वा बृहस्पतिः ॥

27. If cattle trespass into a cultivated field, or an enclosed pasture-land (or where grass and wood are stocked), or a cow-pen,—they shall be caught or beaten—so says Bṛhaspati.—(Kātyāyana in *Smṛtichandrikā*, p. 487.)

NOTES

The smaller ones—calves, for instance,—shall be '*caught*' by the ear and turned out, and the larger ones—bulls and the like—are to be driven off by being 'beaten' with sticks.—(*Smṛtichandrikā*, p. 487.)

DAMAGE AND TRESPASS BY CATTLE

28. कात्यायन.] अधमोत्तममध्यानां पशूनां चैव ताडने ।
स्वामी तु विवदेद् यत्र दण्डं तत्र प्रकल्पयेत् ॥

28. In the case of damage done by cattle of all kinds—highest, lowest and medium—if the owner of the cattle objects to the whipping (of the keeper and the animals), fines should be imposed.—(Kātyāyana in *Smṛtichandrikā*, p. 488.)

29. गौतम 32. 25.] पथि क्षेत्रेऽनावृते पशुपालक्षेत्रिकयोः ।

29. If the field is situated on the road-side and is left unfenced, then the blame of the damage lies with the keeper and the cultivator.—(Gautama, 12. 21.)

30. नारद.] पथि ग्रामविवीतान्ते न दोषो ह्यल्पकालकम् ।।

30. If the field is situated on the road-side, or on the outskirts of the village, or of the enclosure where wood and grass are stocked,—no one is to be blamed if the cattle has grazed there for a short time only.—(Nārada in *Smṛti-chandrikā*, p. 488.)

NOTES

So also Viṣṇu (5. 147—150) where 'the bull set at liberty' and 'the newly-calved cow' have been added.

31. मनु 8. 240.] पथि क्षेत्रे परिवृते ग्रामान्तीयेऽथवा पुनः ।
सपालः शतदण्डार्हो विपालान् वारयेत्पशून् ॥

31. If cattle attended by the keeper be found in a fenced field on the road-side, or near the village, the keeper should be fined one hundred; cattle without a keeper shall be driven off.—(Manu, 8. 240.)

NOTES

'*Cattle without a keeper*'—Such calves as have been set free in connection with religious ceremonies; or such cattle as may have strayed from its herd.—In the case of other cattle roaming about without a keeper, punishment shall be inflicted upon the owner of the cattle.—(*Medhātithi.*)

32. मनु 8. 241.] क्षेत्रेष्वन्येषु तु पशुः सपादं पणमर्हति ।

32. In the case of fields other than those just mentioned the cattle-keeper shall be fined a *Paṇa* and a quarter.—(Manu, 8. 241.)

33. मनु 8. 241.] सर्वत्र तु शदो देयः क्षेत्रिकस्येति धारणा ।

33. In all cases the crop damaged shall be made good to the cultivator—such is the rule.—(Manu, 8. 241.)

34. नारद] उत्क्रम्य तु वृतिं यः स्यात् सस्यघातो गवादिभिः ।
पालः शास्यो भवेत्तत्र न चेच्छक्त्या निवारयेत् ॥

34. If crops are damaged by cattle passing over the fence, the keeper should be punished, if he has not tried his best to keep them out.—(Nārada in *Vīramitrodaya*, p. 446 and *Smṛtichandrikā*, p. 491.)

35. नारद] ग्रामोपान्ते च यत् क्षेत्रं विवीतान्ते महापथे ।
अनावृतं चेत्तन्नाशे न पालस्य व्यतिक्रमः ॥

35. In the case of fields situated near the village, or close to the enclosure for stacking grass and wood, or on the public road,—if they are left unfenced, no blame attaches to the keeper if the cattle trespass and damage the crops. (Nārada in *Smṛtichandrikā*, p. 491.

36. याज्ञवल्क्य 2. 162.] पथि ग्रामविवीतान्ते क्षेत्रे दोषो न विद्यते ।
अकामतः; कामचारे चौरवद्दण्डमर्हति ॥

36. In the case of fields situated on the road-side, near an enclosure for stacking grass and wood, or near the village, —no blame attaches to any one for damage done, if it has been done unintentionally; in the event of its being done intentionally, the man doing it should be punished like a thief.—(*Yājña.* 2. 162.)

37. नारद] या नष्टा पालदोषेण गौः क्षेत्रं तु विनाशयेत् ।
न तत्र स्वामिनो दोषः पालस्तं दण्डमर्हति ॥

37. If a cow, gone astray through the keeper's carelessness, damages the crops in a field, it is the keeper, not the owner, that should be punished.—(Nārada in *Smṛtichandrikā*, p. 491.)

38. बृहस्पति] सस्यान्निवारयेद् गास्तु चीर्णदोषो द्वयोर्भवेत् ।
स्वामी शददमं दाप्यः पालस्ताडनमर्हति ॥

38. Cows should be kept away from crops; if the crops are damaged, both should be held responsible; the keeper should be beaten and the owner made to make good the

damage and also pay a fine.—(Bṛhaspati in *Smṛtichandrikā*, p. 491.)

NOTES

This refers to cases where the crops are entirely uprooted—says *Vīramitrodaya*, p. 450.

39. नारद] समूलसस्यनाशे तु तत्स्वामी प्राप्नुयाच्छदम् ।
वधेन गोपो मुच्येत दण्डं स्वामिनि पातयेत् ॥

39. In a case where the crop has been entirely uprooted the owner of the crops should be compensated for the crops; the cattle-keeper may be let off with a beating, and the fine should be imposed on the owner of the cattle.—(Nārada in *Smṛtichandrikā*, p. 492.)

40. याज्ञवल्क्य 2. 161.] यावत् सस्यं विनश्येत तावत् क्षेत्री फलं लभेत् ।
पालस्ताड्योऽथ।गोमी तु पूर्वोक्तं दण्डमर्हति ॥

40. The owner of the field shall receive, in compensation, as much of the crops as may have been damaged, the cattle-keeper should be beaten and the cattle-owner should be fined.—(Yājña. 2. 161.)

NOTES

The exact amount of the damage and compensation is to be computed by impartial arbitrators; and it shall be paid to the field-owner by the cattle-owner, who will pay the prescribed fine to the king; and the keeper shall be beaten.— *Aparārka*.)

When the cattle-owner has paid the compensation, whatever of the crops may be available shall be taken away by him—says *Mitākṣarā*: but according to a text from Nārada quoted by it, it is only the stalks for fodder that may be given to him; if there are any grains these shall go to the cultivator.

41. नारद] गोभिस्तु भक्षितं सस्यं यो नरः प्रतियाचते ।
सामन्तानुमतं देयं धान्यं वा तत्र वापितम् ॥

41. When crops have been grazed by cattle, and the cultivator demands compensation, it shall be paid as determined by the arbitrators; and the seeds sown shall also be made good.—(Nārada in *Smṛtichandrikā*, p. 492.)

NOTES

If crops have been damaged by cattle, the damage shall be valued, and double that amount shall be paid to the owner of the crops.—(*Arthashāstra*, p. 3. 10.)

42. याज्ञवल्क्य 2. 159.] माषानष्टौ तु महिषी सस्यघातस्य कारिणी ।
दण्डनीया तदर्धं तु गौस्तदर्धमजाविकम् ॥

42. When buffaloes damage crops, their owner shall be fined at the rate of 8 *Māṣas* for each buffalo; in the case of cows, the fine is half of that; and half again of this latter in the case of goats and sheep.—(Yājña p. 2. 159.)

NOTES.

'*Māṣa*'—the twentieth part of a *Kārṣāpaṇa* (*Aparārka*),—the twentieth part of a copper *Paṇa* (*Mitākṣarā* and *Parāsharamādhava*, p. 267.)

The penalties here prescribed are for cases where the damage has been done unintentionally on the part of the keeper or the owner—(*Mitākṣarā.*)

43. याज्ञवल्क्य 2. 160.] भक्षयित्वोपविष्टानां यथोक्ताद् द्विगुणो दमः ।
सममेषां विवीतेऽपि, खरोष्ट्रं महिषीसमम् ॥

43. (*a*) If after having grazed the crops the animals remain seated in the field, the penalty is to be double of what has been laid down in 42.—(*b*) The same penalties (as in 37 and 38) are to be imposed in the case of damage done to hay and grass-stacks.—(*c*) In the case of damage done by mules and camels, the penalty is to be as in the case of buffaloes.—(Yājña. 2. 160).

44. स्मृत्यन्तर] वसतां द्विगुणः प्रोक्तः सवत्सानां चतुर्गुणः ।

44. The penalty in the case of cattle continuing to remain in the field, shall be double; and quadruple, if they are accompanied by calves.—(*Smṛtyantara* in *Vīramitrodaya*, p. 447.)

45. कात्यायन] दापयेत्पणपादं गां द्वौ पादौ महिषीं तथा ।

45. The owner of the cow should be fined a quarter *Paṇa*, and that of the buffalo, two quarters.—(Kātyāyana and Nārada in *Smṛtichandrikā*, p. 494.)

46. स्मृत्यन्तर] पणस्य पादौ द्वौ गां तु द्विगुणं महिषीं तथा ।
तथाऽजाविकवत्सानां पादो दण्डः प्रकीर्तितः ॥

46. The owner of the cow should be fined two quarters of a *Paṇa* ; that of the buffalo, double of that ; and that of goats, sheep and calves, only one quarter.—(*Smṛtyantara* in *Vīramitrodaya*, p. 448.)

NOTES

This refers to cases where the animals have continued to sit in the field after having eaten the crops.—(*Vīramitrodaya*, p. 448.)

47. नारद] माषं गां दापयेद्दण्डं द्वौ माषौ महिषीन्तथा ।
तथाऽजाविकवत्सानां दण्डः स्यादर्धमाषिकः ॥

47. The owner of the cow should be fined one *Māṣa* ; that of the buffalo, two *Māṣas* ; that of goats, sheep and calves, half a *Māṣa*.—(Nārada in *Mitākṣarā* on 2. 159.)

NOTES

This refers to cases where the grazing has been done unseen by the keeper (*Smṛtichandrikā*, p. 495) ;—where the crops have not been eaten up to the roots, but enough has been left to enable them to grow again(*Mitākṣarā* 2.159) ; —where the animals have grazed just for a moment (*Parāsharamādhava*, p. 267 ; *Vīramitrodaya*, p. 448.)

48. नारद] गावः पादं प्रदाप्यास्तु महिष्यो द्विगुणं ततः ।
अजाविके सवत्से तु माषो दण्डः परः स्मृतः ॥
सन्नानां द्विगुणो दण्डो वसतां च चतुर्गुणः ॥

48. The owner of cows should be fined one quarter ; the owner of buffaloes, double of that ; that of goats and sheep with their young ones, one *Māṣa* shall be the maximum. If the animals have sat in the field, the fine shall be double. If they have continued to stay there, it shall be quadruple.—(Nārada in *Aparārka*, p. 769.)

49. नारद] प्रत्यक्षचारकाणां तु चौरदण्डः स्मृतो बुधैः ।

49. For those who allow cattle to graze crops, before their eyes, the thief's punishment has been ordained by the wise.—(Nārada in *Aparārka*, p. 769.)

50. विष्णु 5. 140—144.] महिषी चेत् सस्यनाशं कुर्यात् तत्पालकस्त्वष्टौ माषान् दण्ड्यः । अपालकायाः स्वामी । अश्वस्तूष्ट्रो गर्दभो वा गौश्चेत् तदर्धम् । तदर्धमजाविके उक्तो दण्डः ।

50. If a buffalo damages crops, the keeper shall be fined eight *Māṣas*; - if there has been no keeper, her owner shall pay the fine ;—for damage done by a horse or a camel or an ass, the same fine shall be paid ;—for damage done by a cow, the fine shall be half ;—for damage done by a goat, or a sheep, it shall be half of that again.—(Viṣṇu, 5. 140—146.)

51. शङ्खलिखित] रात्रौ चरन्ती गौः पञ्चमाषान्, दिवा त्रीन्, मुहूर्ते माषम्, ग्रासे त्वदण्डम् ॥

51. If a cow damages crops by grazing at night, her owner shall be fined 5 *Māṣas* ; during the day, 3 *Māṣas* ; for one moment, 1 *Māṣa* ; if she eats only a mouthful, there shall be no fine. - (Shaṅkha-Likhita in *Vīramitrodaya*, p. 448.)

52. नारद] राजग्रहगृहीतो वा वज्राशनिहतोऽपि वा ।
अथ सर्पेण वा दष्टो वृक्षाद्वा पतितो भुवि ॥
व्याघ्रादिभिर्हतो वापि व्याधिभिर्वाप्युपद्रुतः ।
न तत्र दोषः पालस्य न च दोषोऽस्ति गोमिनाम् ॥

52. No blame attaches either to the keeper or to the owner of the cattle if the damage has been done by an animal either captured by the king, or possessed by an evil planet, or struck by lightning, or bitten by a serpent, or fallen from a tree, or attacked by a tiger or other wild animals, or oppressed by disease. - (Nārada in *Smṛtichandrikā*, p. 496.)

53. नारद] गौः प्रसूता दशाहान्तं महोक्षो वाजिकुञ्जराः ।
निवार्यास्तु प्रयत्नेन तेषां स्वामी न दण्डभाक् ॥

53. A cow within ten days of calving, the public bull, horses and elephants, -these should be carefully driven away ; no blame attaches to their owner.—(Nārada in *Smṛtichandrikā*, p. 496.)

54. उशनस्] अदण्ड्या हस्तिनो ह्यश्वा प्रजापालहिते स्मृताः ।

54. Elephants and horses are not to be punished, as they are the means of protecting the people.—(Ushanas in *Smṛti-chandrikā*, p. 496 and *Aparārka*, p. 771.)

NOTES

This immunity pertains to only royal elephants and horses.—(*Aparārka*, p. 771.)

55. मनु 8. 242.] अनिर्दशाहां गां सूतां वृषान्देवपशूंस्तथा ।
सपालान् वा विपालान् वा न दण्ड्यान्मनुरब्रवीत् ॥

55. No punishment shall be inflicted in the case of a cow within ten days of calving, or public bulls, or dedicated cattle,—whether with or without keepers.—(Manu, 8. 242.)

56. याज्ञवल्क्य 2. 163.] महोक्षोत्सृष्टपशवः सूतिकागन्तुकादयः ।
पालो येषां च ते मोच्या राजदैवपरिप्लुताः ॥

56. The public bull, the dedicated cattle, the newly-calved cow and such strange cattle as have strayed from their herd,—these should be let off; as also those suffering from an act of God or King, even when accompanied by their keepers.—(Yājña. 2. 163.)

57. उशनस्] अदण्ड्याः काणकुण्ठाश्च पृथक् च कृतलक्षणाः ।
अदण्ड्याऽऽगन्तुकी गौश्च सूतिका चाभिसारिणी ॥
अदण्ड्याश्चोत्सवे गावः श्राद्धकाले तथैव च ॥

57. One-eyed and one-horned cattle, the branded bull, as also the strange cow, the newly-calved cow, and the cow that has strayed from her herd and is roaming about with a view to returning to it; also cows taking part in a rejoicing or at the time of a *shrāddha*.—(Ushanas in *Aparārka*, p. 771.)

NOTES

The Arthashāstra has the following rules on this subject—

(*a*) When cattle have entered a field, they shall be driven away by means of whips or goads. If they are hurt in any way, the man hurting them shall be punished as for 'Assault.'—(*Arthashāstra*. 3. 10.)

(*b*) If camels and buffaloes have gone off after grazing in the fenced pasture-land, the owner of the pasture-land shall realise from their owners a quarter *Paṇa*; in the case of cows, horses, and mules one-eighth of a *Paṇa*; in the case of small animals, the sixteenth part of a *Paṇa*.—If, after grazing, they have sat on the land, double the amounts shall be levied.—If they have lain there at night, the fine shall be quadrupled.—No charges shall be made in the case of consecrated bulls, or newly-calved cows or milch cows or breeding bulls.—

(*c*) If a cattle-keeper takes cattle to graze in a pasture-land without having obtained the permission of that land-owner he shall be fined 12 *Paṇas*; —if he lets them in and allows them to graze at random, the fine shall be 24 *Paṇas*. The keeper of the pasture-land shall be fined half these amounts.—

(*d*) If cattle graze plantain and other clustering trees, the fine shall be the same as above.—(*Arthashāstra*, 3.10.)

(*e*) If cattle have broken through the fence, the fine shall be double.—

(*f*) If cattle eat the grains lying in the house, or in the threshing yard, or in heaps, the damage caused shall be fully compensated.—(*Arthashāstra*, 3. 10.)

CHAPTER XII

CUSTOMS AND CONVENTIONS OF CORPORATE BODIES

1. नारद 10.] पाखण्डनैगमादीनां स्थितिः समय उच्यते ॥

1. The aggregate of conventions arrived at amongst heretical sects, followers of the Veda (or trading corporations) and the like, is called 'custom' (or compact).—(Nārada, 10. 1; in *Vivādaratnākara*, p. 177.)

NOTES

'*Heretical sects*'—who do not follow the Veda, Buddhist and Jaina monks, [all save *Mayūkha*, p. 215, which explains it as 'such traders as carry on their business, not always in consonance with the Veda.]

'*Naigama*'—has been variously explained: 'citizens' (*Vivādaratnākara*, p. 177); 'merchants dealing in diverse kinds of merchandise trading together' (*Smṛtichandrikā*, p. 523; *Madanaratna* in *Vīra.*, p. 423 and *Aparārka* on 2. 192); the *Pāshupatas* and other sects who accept the authority of the Veda as the work of a trustworthy author (*Mitākṣarā*); those traders who carry on their business in consonance with the Veda (*Mayūkha*, p. 215); traders belonging to diverse castes who carry on trade jointly in foreign lands. (*Aparārka* on 2.192.)

There are combinations formed by persons professing the same faith or path, even though inhabiting different countries and belonging to different castes: for instance, there is a 'confederation of mendicants,' a 'confederation of traders,' a 'confederation of Vedic scholars,' and so forth. There are several kinds of business in which villagers make combinations among themselves, *e.g.*, 'our village is being encroached upon by the inhabitants of another village, let us prevent it' and so forth.—(*Medhātithi* on Manu, 8. 220.)

NOTES

2. याज्ञवल्क्य 2. 186.] राजा कृत्वा पुरे स्थानं ब्राह्मणान् न्यस्य तत्र तु ।
त्रैविद्यान् वृत्तिवद्ब्रूयात् स्वधर्मः पाल्यतामिति ॥

2. Having erected a suitable place in the city, the king shall establish therein Brāhmaṇas learned in the three Vedas; and having ordained their living, he shall direct them to 'carry on their duties.'—(Yājña. 2.188.)

NOTES

'*Living*'—Suitable residence and maintenance.—(*Aparārka.*)

3. बृहस्पति 17. 2-3.] वेदविद्याविदो विप्रान् श्रोत्रियानग्निहोत्रिणः ।
सत्कृत्य स्थापयेत् तत्र तेषां वृत्तिं प्रकल्पयेत् ॥
अनाच्छेद्यकरास्तेषां प्रदद्याद्गृहभूमयः ।
मुक्तभाव्याश्च नृपतिर्लेखयित्वा स्वशासने ॥

3. Brāhmaṇas imbued with a knowledge of the Veda and of the sacred lore, learned divines and persons maintaining the Fire,—these the king shall bring together and establish in his kingdom and provide livings for them.—He shall bestow on them houses and lands, exempt from rent, declaring in a written grant that all taxation has been remitted.—(Bṛhaspati, 17. 2-3 ; in *Vivādaratnākara*, p. 178.)

4. बृहस्पति 17. 4.] नित्यं नैमित्तिकं काम्यं शान्तिकं पौष्टिकं तथा ।
पौराणां कर्म कुर्युस्ते सन्दिग्धेऽर्थे च निर्णयम् ॥

4. They shall perform for the citizens all the rites—obligatory, occasional and those for some end, as also the expiatory and auspicious ones ; and shall also decide doubtful cases.—(Bṛhaspati, 17. 4 ; in *Vivādaratnākara*, p. 178.)

5. बृहस्पति 17. 5-6.] ग्रामश्रेणिगणानां च सङ्केतः समयक्रिया ।
बाधाकाले तु सा कार्या धर्मकार्ये तथैव च ॥
वाटचौरभये बाधा सर्वसाधारणी स्मृता ।
तत्रोपशमनं कार्यं सर्वैर्नैकेन केनचित् ॥

5. A compact formed among villagers, companies and tribes is called ' convention ' ; such conventions must be made at times of distress and also in regard to acts of piety.—When danger is apprehended from robbers, it is regarded as a distress common to all ; such danger should be repelled by all, not by one man alone.—(Bṛhaspati, 17. 5-6 ; in *Vivādaratnākara*, p. 178.)

NOTES

' *Acts of piety* '—Such as the repairing of temples, tanks and the like (See next section). The conventions referred to are such as—(1) raising a common fund by subscriptions, during famines, (2) arranging to supply one armed guard at every household, when danger from robbers is apprehended, (3) such and such persons should form a deputation to wait upon the king for the redressing of certain grievances.

6. बृहस्पति 17. 11—13.] सभाप्रपादेवगृहतडागारामसंस्कृतिः ।
तथाऽनाथदरिद्राणां संस्कारो यजनक्रिया ॥
कुलायनं निरोधश्च कार्यमस्माभिरंशतः ।
यत्रैतल्लिखितं सम्यक् धर्म्या सा समयक्रिया ॥
पालनीया समस्तैस्तु ।

6. When a compact is entered in a document to the following effect—'the construction of an Assembly Room, a water-drinking booth, a temple, a tank or a park, arranging for the sacraments of orphans and the poor, performing of sacrifices, bringing together and keeping famine-stricken persons,—all this shall be done by us by means of proportionate subscriptions,'—this is a lawful convention; and it should be observed by all, (as also by the king).—(Bṛhaspati, 17. 11—13. in *Vivādaratnākara*, p. 181.)

NOTES

'*Bringing together and keeping famine-stricken people.*'—This is the meaning of the phrase '*kulāyanam nirodhashcha,*' according to *Smṛtichandrikā* (p. 522), *Parāsharamādhava* (p. 249).—According to *Vivādaratnākara* (p. 182), it means 'bringing together of the family, and preventing the ingress of wicked persons.'—*Kalpataru* reads *kulyāyānam nirodhaḥ,*' and explains it as 'the making and closing of water-courses.'

7. नारद 10. 2.] पाखण्डनैगमश्रेणीपूगव्रातगणादिषु ।
संरक्षेत् समयं राजा दुर्गे जनपदे तथा ॥

7. Among heretical sects, trading corporations, trade guilds, unions, troops, tribes and other associations—the king should maintain the conventions, as also in regard to fortified towns and the open country.—(Nārada, 10. 2.)

NOTES

The conventions referred to are as follows—(*a*) among 'heretical sects' there are conventions for the governance of monasteries and other institutions; (*b*) among corporations of merchants trading in diverse kinds of merchandise according to *Smṛtichandrikā*, there are such conventions as that 'members who ill-treat messengers should be punished'; (*c*) among 'trade-guilds' (of merchants dealing with the same trade), there are conventions regarding monopolies and prices; (*d*) among 'unions' (of riders of elephants and horses); and(*e*) 'troops'(of soldiers wielding diverse weapons)there are such conventions as 'no one shall join in a battle except in the company of others';—(*f*) among

'tribes' (groups of relations), there are such conventions as 'the ear-piercing ceremony shall be performed during the fifth year of the child';—(*g*) in regard to 'fortified towns,' there are such conventions as 'no food shall be sold outside';—(*h*) in regard to the 'open country,' there are conventions regarding duties to be realized from foreign traders.—(*Smṛtichandrikā*, p. 523.)

8. याज्ञवल्क्य 2. 192.] श्रेणिनैगमपाखण्डिगणानामप्ययं विधिः।
भेदं चैषां नृपो रक्षेत् पूर्ववृत्तिं च पालयेत् ॥

8. The king shall maintain the conventions among trade-guilds, trading corporations (or Vedic sects), heretical sects and tribes (or troops).—(Yājña. 2 .192.)

9. बृहस्पति 17. 7.] कोशेन लेखक्रियया मध्यस्थैर्वा परस्परम्।
विश्वासं प्रथमं कृत्वा कुर्युः कार्याण्यनन्तरम् ॥

9. Mutual confidence having been established by means of oath, by a written compact, or by sureties—they shall set about their work.—(Bṛhaspati, 17. 7; in *Vivādaratnākara*, p. 178.)

10. कात्यायन] समूहानां तु यो धर्मस्तेन धर्मेण ते सदा।
प्रकुर्युः सर्वकार्याणि स्वधर्मेषु व्यवस्थिताः ॥

10. Members of a corporation shall always remain firm in the observance of their conventions; and shall carry on their business in accordance with these conventions.—(Kātyāyana in *Vivādaratnākara*, p. 180 and *Smṛtichandrikā*, p. 525).

11. याज्ञवल्क्य 2. 186.] निजधर्माविरोधेन यस्तु सामयिको भवेत्।
सोऽपि यत्नेन संरक्ष्यो धर्मो राजकृतश्च यः ॥

11. Whatever duty devolves upon a man by virtue of convention,—that he shall duly perform, so far as it may be in consonance with his religious duties; so also shall he perform the duty imposed upon him by the king.—(Yājña. 2. 186.)

NOTES

If there were a convention to the effect that 'all members of the corporation should be present at the king's palace at the time at which the scriptures lay down the performance of the Twilight Prayers—such a convention shall not be obeyed.—(*Smṛtichandrikā*, p. 525.)

'*By virtue of convention*'—'*Sāmayikaḥ*'—has been explained by *Vivādaratnākara*, (p. 181) as 'a duty calculated to bring prosperity and security to the corporation.'

'*Duty imposed by the king*'—such as 'all men shall perform expiatory rites for a month for the welfare of the kingdom.'—(*Vivādaratnākara*, p. 181.)

12. कात्यायन] अविरोधेन धर्मस्य निर्गतं राजशासनम् ।
तस्यैवाचरणं पूर्वं कर्तव्यम् ।

12. When a royal edict has been promulgated,—which is not inconsistent with righteousness,—it shall always be carried into action.—(Kātyāyana in *Smṛtichandrikā*, p. 525.)

13. बृहस्पति 17. 10.] द्वौ त्रयः पञ्च वा कार्याः समूहहितवादिनः ।
कर्तव्यं वचनं तेषां ग्रामश्रेणिगणादिभिः ॥

13. Two, three or five persons shall be appointed as advisers of the corporation; their advice shall be followed by all the members of the corporation.—(Bṛhaspati, 17. 10; in *Vivādaratnākara*, p. 179.)

NOTES

As corporations would always consist of large numbers of members of diverse opinions and idiosyncracies it would be impossible to obtain unanimity of decision upon any point; hence the necessity of appointing a few representative councillors or advisers,—a select committee.—(*Smṛtichandrikā*, p. 526.)

14. बृहस्पति 17. 8—9.] विद्वेषिणो व्यसनिनः शालीनालसभीरवः ।
लुब्धातिवृद्धबालाश्च न कार्याः कार्यचिन्तकाः ॥
शुचयो वेदधर्मज्ञा दक्षाः दान्ताः कुलोद्भवाः ।
सर्वकार्ये प्रवीणाश्च कर्तव्याश्च महत्तमाः ॥

14. Such persons shall never be chosen as councillors as are malicious, dissolute, bashful, indolent, timid, avaricious, too old or too young.—Such persons shall be selected to be the chief men, as are honest, acquainted with the Veda and its injunctions, able, self-controlled, sprung from noble families, and efficient in all kinds of business.—(Bṛhaspati, 17. 8—9; in *Vivādaratnākara*, p. 179.)

15. याज्ञवल्क्य 2. 191.] वेदज्ञाः शुचयोऽलुब्धा भवेयुः कार्यचिन्तकाः ।
कर्तव्यं वचनं तेषाम् ॥

15. Persons learned in the Veda and acquainted with its teachings, honest, and not avaricious, should be the councillors; their advice shall be followed (by all members of the corporation).—(Yājña. 2. 191.)

16. याज्ञवल्क्य 2. 188.] कर्तव्यं वचनं सर्वैः समूहहितवादिनाम् ।
यस्तत्र विपरीतः स्यात् स दाप्यः प्रथमं दमम् ॥

16. Every member of the corporation shall follow the advice of wholesome advisers; one who does not do so shall be fined the first amercement.—(Yājña. 2. 188.)

17. कात्यायन] युक्तियुक्तं च यो हन्यात् वक्तुर्योऽनवकाशदः ।
अयुक्तं चैव यो ब्रूयात् प्राप्नुयात् पूर्वसाहसम् ॥

17. Among those councillors, if any one obstructs what is reasonable, or gives no opportunity to the speaker to speak, or urges what is unreasonable, he should be fined the first amercement.—(Kātyāyana in *Smṛtichandrikā*, p. 527.)

18. बृहस्पति 17. 15.] यस्तु साधारणं हिंस्यात् क्षिपेत् त्रैविद्यमेव वा ।
संविक्रियां विहन्याच्च स निर्वास्यस्ततः पुरात् ॥

18. If a member of the corporation damages the interests of the corporation, or insults a learned tribunal, or disturbs a settlement arrived at,—he should be turned out of the community.—(Bṛhaspati, 17. 15; in *Vivādaratnākara*, p. 183.)

NOTES

'*Damages the interests*'—*e.g.* by siding with a person who has been found guilty and ordered to pay a fine which would go towards the joint stock of the corporation.—(*Smṛtichandrikā*, p. 527, and *Vīramitrodaya*, p. 428.)

19. बृहस्पति 17. 16.] अरुन्तुदः सूचकश्च भेदकृत् साहसी तथा ।
श्रेणिपूगनृपद्वेष्टा क्षिप्रं निर्वास्यते पुरः ॥

19. One who is malicious, or a back-biter, or a sower of dissension, or given to violent deeds, or inimically disposed towards the guild, the corporation or the king, shall be banished from the community.—(Bṛhaspati, 17. 16; in *Vivādaratnākara*, p. 184.)

20. बृहस्पति 17. 17.] कुलश्रेणिगणाध्यक्षाः पुरदुर्गनिवासिनः ।
वाग्धिग्दमं परित्यागं प्रकुर्युः पापकर्मिणाम् ॥

20. The heads of tribes, guilds and corporations inhabiting a fort or a town shall reprimand, censure or excommunicate all evil-doers.—(Bṛhaspati, 17. 17; in *Vivādaratnākara*, p. 184.)

NOTES.

'*Excommunicated.*'—The word in the original is '*parityāga*,' which has been explained as 'excommunication' by *Aparārka* (p. 794),—'branding' by *Smṛtichandrikā* (p. 527).

Which of the three punishments shall be inflicted will depend upon the gravity of the offence—says *Aparārka* (p. 794).

21. बृहस्पति 17. 18.] तैः कृतं यत् स्वधर्मेण निग्रहानुग्रहं नृणाम् ।
तद् राज्ञाऽप्यनुमन्तव्यम् ॥

21. Whatever, in the shape of favour or punishment, is done honestly by these heads should be approved of by the king also.—(Bṛhaspati 17.18 ; in *Vivādaratnākara*, p. 184.)

22. बृहस्पति 17. 19.] बाधां कुर्युर्यदैकस्य सम्भूता द्वेषसंयुताः ।
राज्ञा ते विनिवार्यास्तु शास्याश्चैवानुबन्धिनः ॥

22. If however these heads combine, through malice, to injure any single member of the community, the king, coming to know of it, shall restrain them and punish them in proportion to the injury.—(Bṛhaspati, 17. 19 ; in *Vivādaratnākara*, p. 184.)

23. नारद 10. 6.] पृथग्गणांश्च ये भिन्द्युस्ते विनेया विशेषतः ।

23. Persons causing dissension among the members of a corporation shall undergo punishment of a specially severe kind also.—(Nārada, 10. 6 ; in *Vivādaratnākara*, p. 183.)

24. नारद 10. 3.] यो धर्मः कर्म यच्चैषामुपस्थानविधिश्च यः ।
यच्चैषां वृत्त्युपादानमनुमन्येत तत्तथा ॥

24. Whatever be their customs, or activities, or rules of attendance, or means of living,—the king shall approve of.—(Nārada, 10. 3 ; in *Vivādaratnākara*, p. 180.)

NOTES

'*Customs*'—such as wearing matted locks and so forth (*Smṛtichandrikā*, p. 528).

'*Activities*'—observances, such as begging alms and so forth (*Smṛtichandrikā*, p. 528), method of life (*Vivādaratnākara*, p. 180).

'*Rules of attendance*'—such as whenever a drum is beaten, or some such signal given, all the members shall present themselves at an appointed place.—(*Smṛtichandrikā*, p. 528).

25. नारद 10. 4.] प्रतिकूलं च यद्राज्ञः प्रकृत्यवमतं च यत् ।
बाधकं च यदर्थानां तत्तेभ्यो विनिवर्तयेत् ॥

25. The king shall restrain them from such acts as may be injurious to the state, or reprehensible in themselves, or causing pecuniary loss.—(Nārada, 10. 4 ; in *Vivādaratnākara*, p. 185.)

NOTES

'*Injurious to the State*'—Such as the investigation by a *Shūdra*, of disputes among the higher castes,—which, it has been declared, ruins the state.—(*Vīramitrodaya*, p. 430 ; *Parāsharamādhava*, p. 252.)

26. नारद 10. 5] मिथः संघातकरणमहेतौ शस्त्रधारणम् ।
परस्परोपघातं च तेषां राजा न मर्षयेत् ॥

26. Formation of secret cliques, wearing of arms without reason and mutual attacks,—all these the king shall not tolerate.—(Nārada, 10. 5 ; in *Vivādaratnākara*, p. 185.)

NOTES

'*Unlawful wearing of arms*,'—*i.e.*, without any reason, such as the apprehension of danger and the like.—(*Vivādaratnākara*, p. 185.)

27. नारद 10. 7.] दोषवत् करणं यत् स्यादनाम्ना यत् प्रकल्पितम् ।
प्रवृत्तमपि तद् राजा श्रेयस्कामो निवर्तयेत् ॥

27. If there is any such custom as has an evil motive behind it, or opposed to the dictates of Law and Morality,—the king desirous of welfare shall suppress it ; even though it may be a long-continued one.—(Nārada, 10.7 ; in *Vivādaratnākara*, p. 186.)

NOTES

Such customs, for instance, as the prostitution of widows, which may be current among certain heretical sects.—(*Vīramitrodaya*, p. 431 and *Smṛtichandrikā*, p. 529.)

28. बृहस्पति 17. 20.] मुख्यैः सह समूहानां विसंवादो यदा भवेत् ।
तदा विचारयेद्राजा स्वधर्मे स्थापयेच्च तान् ॥

28. When a dispute arises between the Head and the Corporation, the king shall enquire into it and keep both of them to the right path.—(Bṛhaspati, 17. 20 ; in *Vivādaratnākara*, p. 184.)

29. याज्ञवल्क्य 2. 87] गणद्रव्यं हरेद्यस्तु संविदं लङ्घयेच्च यः ।
सर्वस्वहरणं कृत्वा तं राष्ट्राद् विप्रवासयेत् ॥

29. If any member of the Corporation misappropriate the property of the Corporation, or transgress its rules, the king shall confiscate his entire property and banish him from the kingdom.—(Yājña. 2. 187.)

NOTES

This applies to cases of very serious offences; for minor offences of this kind, the penalty shall be as prescribed by Manu (see below under 33).—(*Aparārka* and *Mitākṣarā*).

Says *Viṣṇu*: If a member embezzles goods belonging to the Corporation, he shall be banished.—(Viṣṇu, 5. 167.)

30. कात्यायन] साहसी भेदकारी च गणद्रव्यविनाशकः ।
उच्छेद्याः सर्व एवैते विख्याप्यैवं नृपैर्भृगुः ॥

30. One who is given to violent deeds, one who sows dissension, one who injures the property of the Corporation,—all these should be turned out of the community by kings after notifying it.—(Kātyāyana in *Smṛtichandrikā*, p. 530.)

31. मनु 8. 220] यो ग्रामदेशसंघानां कृत्वा सत्येन संविदम् ।
विसंवदेन्नरो लोभात् तं राष्ट्राद् विप्रवासयेत् ॥

31. If a man, after having entered into a compact, under oath, with a village, a country or a corporation, should break it, through greed,—him the king shall banish from his kingdom.—(Manu, 8. 220.)

NOTES

Also *Viṣṇu*.—If a member violates an established rule of the corporation, he shall be banished.—(Viṣṇu, 5. 168.)

There are several kinds of business for which villagers form combinations among themselves. For instance, 'our village is being encroached upon by the inhabitants of another village—they graze their cattle on our pasture-lands, they cut our embankments;—if we are all agreed among ourselves, we may prevent all this; it is possible that in this we may come to blows and may have to appear before the Court;—if we remain united then we shall go forward and prevent the encroachment; if not, we shall let it go.' On this compact being proposed, men may agree to it. Having thus entered the compact, and encour-

aged the undertaking, if some one were to shirk away and make common cause with the other party and become lukewarm towards his own neighbours,—such a person should be banished by the king from his kingdom.—The penalty here laid down pertains to the breach of compacts relating to works of public utility, in due accordance with law and custom, and not detrimental to the interests of the city or of the kingdom at large.—(*Medhātithi.*)

32. बृहस्पति 17. 13.] यः समर्थो विसंवदेत् ।
सर्वस्वहरणं दण्डस्तस्य निर्वासनं पुरात् ॥

32. If a member, while able to do so, fails to act up to the compact, he shall be punished by confiscation of his entire property and banishment from the town.—(Bṛhaspati, 17.13; in *Smṛtichandrikā*, p. 530.)

33. मनु 8. 221.] निगृह्य दापयेच्चैनं समयव्यभिचारिणम् ।
चतुः सुवर्णान् षण्णिष्कान् शतमानं च राजतम् ॥

33. Having caught the breaker of a compact, the king shall make him pay six '*Niṣkas*' of four '*Suvarṇas*' each, and also one silver *Shatamāna*.—(Manu, 8. 221.)

NOTES

The penalty of banishment prescribed in the preceding sections applies to cases where the man has broken the compact '*through greed*'; the present sections lay down the penalty for cases where the breach has been due to the man's ignorance.—(*Medhātithi.*)

'*Of four Suvarṇas*'—This has been added as there are several measures of the '*Niṣka*,'—by one it is equal to 5 *Suvarṇas*, by another to 108 *Suvarṇas*.

According to *Aparārka* (p. 793), *Mitākṣarā* (2. 187), *Parāsharamādhava* (p. 253) and *Viramitrodaya* (p. 429), these two texts of Manu (sections 31 and 33) lay down *four* distinct penalties—(1) Banishment, (2) fine of 6 *Niṣkas*, (3) fine of 4 *Suvarṇas* and (4) fine of one *Shatamāna* (equivalent to 320 *Rattis*); and which one shall be inflicted in a particular case shall be determined by the caste, the learning and other qualifications of the offender or (according to *Aparārka* by the nature of the offence.)—Medhātithi has taken 'Banishment' as one meant for serious cases of breach 'through greed' and the fines as another, for cases where the offence is less serious, being due to ignorance.

Some people have taken the four penalties as meant for the four castes,—but there is no justification for this,—says *Viramitrodaya*.

34. बृहस्पति 17. 21.] सम्भूयैकमतिं कृत्वा राजभाव्यं हरन्ति ये ।
ते तदष्टगुणं दाप्याः वणिजश्च पलायिनः ॥

34. Those persons who combine and conspire to cheat the king of his dues shall be made to pay eight times as much, and shall be punished if they take to flight.—(Bṛhaspati, 17. 21.)

35. याज्ञवल्क्य 2. 189-190.] समूहकार्य आयातान् कृतकार्यान् विसर्जयेत् ।
सदानमानसत्कारैः पूजयित्वा महीपतिः ॥
समूहकार्यप्रहितो यल्लभेत तदर्पयेत् ।
एकादशगुणं दाप्यो यद्यसौ नार्पयेत् स्वयम् ॥

35. When a deputation of a Corporation has waited on the king, as soon as their business is done, the king shall dismiss them with honour and presents. Whatever presents a member of such a deputation receives, he shall make over to the corporation; if he fails to do so, he should be made to pay eleven times as much. (Yājña.. 2. 189-190.)

36. बृहस्पति 17. 22-23.] ततो लभेत यत् किञ्चित् सर्वेषामेव तत् समम् ।
षाण्मासिकं मासिकं वा विभक्तव्यं यथांशतः ॥
देयं वा निःस्ववृद्धान्धस्त्रीबालातुररोगिषु ।
सान्तानिकादिषु तथा ॥

36. Whatever is obtained by a member of the Corporation shall belong to all in common; whether the amount be sufficient to maintain them for six months or for only one month, it shall be divided among the members in proportion to their shares in the Corporation.—Or, it shall be bestowed on the poor, the decrepit, the afflicted women, children, the sick, or persons with many children.—(Bṛhaspati, 17. 22-23; in *Aparārka*, p. 795.)

NOTES

According to *Aparārka* (p. 795), the meaning is that if the amount obtained is large enough to support the families of the members for one to six months, it will be divided among themselves,—if it is smaller it will be given away to the sick and the poor.

37. बृहस्पति 17. 24.] यत्नैः प्राप्तं रक्षितं वा गणार्थे वा ऋणं कृतम् ।
राजप्रसादलब्धं वा सर्वेषामेव तत् समम् ॥

37. Whatever is acquired or saved or borrowed or obtained by royal favour by members—on behalf of the Corporation—belongs equally to all the members.—(Bṛhaspati, 17. 24; in *Aparārka*, p. 795.)

38. कात्यायन] गणमुद्दिश्य यत् किञ्चित् कृत्वर्णं भक्षितं भवेत् ।
आत्मार्थं विनियुक्तं वा देयं तैरेव तद्भवेत् ॥

38. If a debt incurred on behalf of the Corporation has been eaten up by any member, or used for his own purpose,—it should be payable by that member.—(Kātyāyana in *Vivādaratnākara*, p. 187 and *Smṛtichandrikā*, p. 533.)

39. कात्यायन] तथैव भोज्यवैभाज्यदानधर्मक्रियासु च ।
समूहस्थोंऽशभागी स्यात् प्रगतस्त्वंशभाङ्न तु ॥

39. All those persons who have secured admission into a Corporation or a trade-guild, become entitledto all its existing assets and liabilities—such as all articles of food and other properties, and the duty of performing charities and religious acts ;—the man who has gone out of it has no share in those.—(Kātyāyana in *Vivādaratnākara*, p. 188; *Vivādachintāmaṇi*, p. 186 and *Smṛtichandrikā* p. 533.)

NOTES

Vivādachintāmaṇi explains '*pragata*' (rendered above as 'one who has gone out of the Corporation') as 'one who has, for his own benefit, sought and obtained admission and has not been invited to join'; thus it draws a distinction between members who have joined by invitation (who alone are sharers in the assets and liabilities) and those who have become members by application.

40. कात्यायन] एकपात्रेऽथ पंक्त्या वा सम्भोक्ता येन यो भवेत् ।
अकुर्वंस्तत्तथा दण्ड्यस्तस्य दोषमदर्शयन् ॥

40. If, among persons entitled to eat out of the same dish or in the same line,—any one refuse to eat with another, without assigning any reason for the refusal,—he shall be punished.—(Kātyāyana in *Vivādaratnākara*, p. 185.)

NOTES

The Arthashāstra (3. 10) has the following rules on the subject :—

(*a*) If a cultivator, having agreed to settle and work in a village, fails to do so, he shall be made to pay a fine to the village itself.—If he does not do the stipulated work, he shall pay double the amount of what his wages would have been.—If he does not pay his share of the dues payable by the entire village-community, his fine shall be double the amount of that share. If he does not contribute

his share of foods and drinks towards a communistic dinner, his fine shall be double the cost of his share.—If he does not contribute his share towards public entertainments he and his family shall not be allowed to witness them; if they witness them secretly they shall pay double the amount of their contribution.—(*Arthashāstra*, 3. 10.)

(*b*) If even one member of the community asks the members of the community to do something for the good of the entire community they shall do it,—if they do not, each of them shall be fined 12 *Paṇas*.—If they combine and strike him, each of them shall be fined double the amount of the fine ordinarily imposed for such striking; the fine of the man actually delivering the blow being specially heavy.—(*Arthashāstra*, 3. 10.)

CHAPTER XIII

RESCISSION OF SALE AND PURCHASE

1. बृहस्पति 18. 2.] जङ्गमं स्थावरं चैव द्वे द्रव्ये समुदाहृते ।
क्रयकाले पण्यशब्द उभयोरपि च स्मृतः ॥

1. There are two kinds of property: moveable and immoveable; when these properties are put up for sale, both of them come to be known as 'property for sale.'—(Bṛhaspati, 182) in *Vivādaratnākara*, p. 189.)

2. नारद 8. 2-3.] लोकेऽस्मिन् द्विविधं द्रव्यं स्थावरं जङ्गमं तथा ।
क्रयविक्रयधर्मेषु सर्वं तत् पण्यमुच्यते ॥
षड्विधस्तस्य च बुधैर्दानादानविधिः स्मृतः ।
गणिमं तुलिमं मेयं क्रियया रूपतः श्रिया ॥

2. In this world there are two kinds of property: moveable and immoveable; when any kind of property forms the object of sale or purchase it is known as 'property for sale.' The method of its sale and purchase has been declared by the wise to be of six kinds: (1) by number, (2) by weight, (3) by measure, (4) by practical test, (5) by beauty, and (6) by lustre.—(Nārada, 8. 2-3 in *Vivādaratnākara*, p. 189; in *Aparārka*, p. 828; and in *Vīramitrodaya*, p. 437.)

NOTES

'*Sold by number*'—such as nuts and flowers;—'*sold by weight*'—such as gold and silver;—'*sold by measure*'—grains;—'*sold by practical test*'—oxen and other beasts of burden;—'*sold by beauty*'—such as 'public women';—'*sold by lustre*'—such as emeralds, rubies and other gems.—*Vivādaratnākara*, p. 189 and *Vīramitrodaya*, p. 437; also *Aparārka*, p. 828, which last supplies another alternative explanation of (5) as "sold by money, such as lands and gardens."

3. नारद 8. 4.] विक्रीय पण्यं मूल्येन क्रेतुर्यो न प्रयच्छति ।
स्थावरस्य क्षयं दाप्यो जङ्गमस्य क्रियाफलम् ॥

3. If a man sells property for a certain price, but does not hand it over to the purchaser, he shall be made to deliver

the property along with the produce, if it is immoveable property, —and along with the profits arising on it, if it is moveable.—(Nārada, 8. 4 ; in *Vivādaratnākara*, p. 190.)

NOTES

'*Produce*'—stands for the usufruct of the immoveable property sold.—'*Profits,*' for (*a*) the use made of the beasts of burden and (*b*) the milk of the cow (*Vivādaratnākara*, p. 190 and *Vivādachintāmaṇi*, p. 86) ; *Smṛtichandrikā*, (p. 509) and *Vīramitrodaya* (p. 437) confine it to the 'milk' only.

This refers to cases where the value of the property has increased since the sale. For cases where the property has deteriorated, we have the following rule—(*Vīramitrodaya*, p. 437.)

4. नारद 8. 5.] अर्घाच्चेदपचीयेत सोदयं पण्यमावहेत् ।
स्थायिनामेष नियमो दिग्लाभो दिग्विचारिणाम् ॥

4. If there has been a fall in the market-value of the property during the interval, the purchaser shall receive the property itself, along with the difference (between the price originally paid by the purchaser and the later reduced value of the article). This law applies to cases where the parties are inhabitants of the same place ; in the case of those trading abroad, the profit that might have been derived by the purchase from the foreign trade, in connection with the property in question, shall also be made over to him by the party from whom he had purchased it.—(Nārada, 8. 5 ; *Vivādaratnākara*, p. 190.)

NOTES

'*Difference*'—which would be the loss incurred by the purchaser by reason of the goods not having been delivered to him on the occasion of the sale.—(*Vivādachintāmaṇi*, p. 87.)

5. याज्ञवल्क्य 2. 254.] (A) गृहीतमूल्यं यः पण्यं क्रेतुर्नैव प्रयच्छति ।
सोदयं तस्य दाप्योऽसौ–(B) दिग्लाभं च दिगागते ॥

5. (A) The seller, having received the price, if he dose not deliver the goods sold to the purchaser even on demand, he should be made to deliver it along with interest, (if the parties are inhabitants of the same country). (B) If the purchaser is a trader, come from a foreign country, the goods shall be delivered to him, along with the amount of such profit as

might have been made by trading with it in foreign lands.—(Yājña. 2. 254.)

NOTES

'*With interest*'—The interest in the case being at the rate of *five* per cent (as pointed out by *Smṛtichandrikā*, p. 510), or 2 or 3 per cent (as indicated by *Mitākṣarā*).—Such is the simple meaning of the first part of the text, but, with a view to make the words yield the rule embodied in the above-mentioned text of Nārada, *Mitākṣarā* has, in addition to the above explanation, propounded another explanation, where the meaning of the text is as follows :—" Both the parties being inhabitants of the same country, if the seller has failed to deliver the goods sold to the purchaser,—and since that sale the market-value of the goods has gone down,—then the seller should be made to deliver the article along with the difference in the value of the article.—If however there has been no change in the value of the article since its former sale, then it will be delivered along with any profits that the seller has derived from retaining it and trading with it during the interval."

According to *Smṛtichandrikā* (p. 510) this rule refers to a case where there has been no change in the market-value of the goods.

According to *Aparārka*, in the latter case (of the foreign trader), the 'profit' to be paid is, not *only* what might have been derived from trading with the goods in foreign lands, but *also* interest upon the amount of purchase-money paid by the original purchaser. It further remarks that this refers to cases where the seller has failed to deliver the goods without having 'repented' the transaction; in cases where there has been repentance, the rule applicable is as laid down by Nārada (see 2 above).

'If, after having sold the goods, the vendor does not deliver them, he shall be fined 12 *Paṇas*; except when some flaw in the transaction is proved,—such as the wrong price having been charged, or the goods having been sold when the vendor was absent-minded and so forth.'—(*Arthashāstra*, 3. 15.)

6. विष्णु 5.127-128] गृहीतमूल्यं यः पण्यं क्रेतुर्नैव दद्यात् तस्यासौ
सोदयं दाप्यः। राज्ञा च पणशतं दण्ड्यः ॥

6. If a man does not deliver to the purchaser the goods sold, for which the price has been received by him, he shall be made to deliver it to him, along with interest ;—and he shall be fined by the king 100 *Paṇas*.—(Viṣṇu 5. 127-128.)

7. कात्यायन] क्रीत्वा प्राप्तं न गृह्णीयाद् यो न दद्याददूषितम् ।
स मूल्याद्दशमं भागं दत्त्वा स्वद्रव्यमाप्नुयात् ॥
अप्राप्तेऽर्थे क्रियाकाले कृते नैव प्रदापयेत् ।
एवं धर्मो दशाहात्तु परतोऽनुशयो नतु ॥

7. If the purchaser does not receive the article when made available,—or if the seller, does not deliver the sold article in an unsoiled condition to the purchaser,—he shall be allowed to recover his property (the purchaser, the purchase-money and the vendor, the article sold) on paying the tenth part of the price agreed upon;—but this penalty shall not be paid if the article has not been made available at the time, even though the transaction has been completed. This rule shall be applicable only within ten days of the sale, not beyond that.—(Kātyāyana in *Parāsharamādhava*, p. 260; *Smṛtichandrikā*, p. 511 and *Vivādachintāmaṇi*, p. 88.)

NOTES

Vivādaratnākara (p. 192) and *Vivādachintāmaṇi* (p. 88) read '*Kriyākāre*' and explain it as 'before the transaction has been attested by witnesses or entered in a document.'—*Smṛtichandrikā* (p. 511) reads '*Kriyākāle*' and explains it as 'the time for the purchaser to use the article.'

8. मनु 8.222-223.] क्रीत्वा विक्रीय वा किञ्चिद् यस्येहानुशयो भवेत् ।
सोऽन्तर्दशाहात् तद्द्रव्यं दद्याच्चैवाददीत च ॥
परेण तु दशाहस्य न दद्यान्नापि दापयेत् ।
आददानो ददच्चैव राज्ञा दण्ड्यः शतानि षट् ॥

8. After having bought or sold an article, if the buyer or seller repent of it, he may return or take back that article within ten days; after ten days he shall not return and take it back; if he does, he shall be fined by the king 600 *Paṇas*.—(Manu, 8. 222-223.)

NOTES

According to the *Arthashāstra* 3.15 in the case of tradesmen, the time for 'repentance' allowed is one day;—in that of agriculturists, three days; in the case of cowherds, five days;—the same periods are allowed for the purchaser also.

In the case of goods whereof buying and selling are constantly going on, and which do not deteriorate, either in quality or in quantity or in value,—such for instance, as vessels of copper and other metals,—if they have not been brought into use, they can be returned or taken back within ten days.—In the case of fruits and flowers, the returning should be done either on the same day, or the next.—The period of days here allowed is for persons inhabiting the

same place ; in the case of parties belonging to different places, the returning must be done at the very time of the purchase.—If after the lapse of ten days, the seller repents of the transaction and applies to the king for the rescission of the sale, he should be fined 600 *Paṇas.*—All that is meant is that the seller cannot force the rescission, against the wish of the purchaser ; if the parties agree, there can be rescission by mutual understanding.—(*Medhātithi.*)

Manu, under 8. 228, has extended this same principle to the rescission of all kinds of transaction.

This rule applies to the case of such articles as do not deteriorate by use,—such, for instance, as dwellings, fields, gardens and so forth.—(*Mitākṣarā* 2. 177 ; *Parāsharamādhava*, p. 258 ; *Vīramitrodaya*, p. 436.)

That 600 *Paṇas* are meant has been declared by *Vivādaratnākara* (p. 183).

9. नारद 8. 6.] उपहन्येत वा पण्यं दह्येतापह्रियेत वा ।
विक्रेतुरेव सोऽनर्थो विक्रीयासम्प्रयच्छतः ॥

9. If the article happens to be injured, or destroyed by fire, or carried off, the loss shall be charged to the seller, who did not deliver it after the sale.—(Nārada, 8. 6 ; in *Vivādaratnākara*, p. 192.)

10. याज्ञवल्क्य 2. 256.] राजदैवोपघातेन पण्यदोष उपागते ।
हानिर्विक्रेतुरेवासौ याचितस्याप्रयच्छतः ॥

10. If any damage is done to the article sold, through an act of God or the King, the loss is to be charged to the seller,—if he has failed to deliver the article sold, even though requested to do so.—(Yājña. 2. 256.)

NOTES

For the satisfaction of the purchaser, the seller should deliver to him another article similar to the one sold, or the price received for it.—(*Aparārka* and *Mitākṣarā*.)

11. बृहस्पति] दीयमानं न गृह्णाति क्रीत्वा पण्यं च यः क्रयी ।
विक्रीणानस्तदन्यत्र विक्रेता नापराध्नुयात् ॥

11. When a purchaser has not accepted the article purchased by him, on its being delivered to him, the seller would be committing nothing wrong, if he were to sell it to another person.—(Bṛhaspati in *Vivādachintāmaṇi*, p. 89.)

12. याज्ञवल्क्य 2. 255.] विक्रीतमपि विक्रेयं पूर्वक्रेतर्यगृह्णति ।
हानिश्चेत् क्रेतृदोषेण क्रेतुरेव हि सा भवेत् ॥

12. If the previous purchaser does not accept the article sold and delivered to him, it may be sold again ; if the article has, in the meantime, suffered any damage on account of his fault in not accepting it,—the loss shall be charged to the purchaser.—(Yājña. 2. 255).

13. याज्ञवल्क्य 2. 257.] अन्यहस्ते च विक्रीतं—दुष्टं वाऽदुष्टवद्यदि ।
विक्रीणीते दमस्तत्र मूल्याच्च द्विगुणो भवेत् ॥

13. Having sold an article to one person, if the seller sells it to another,—he should be fined double the amount of the price (and also made to refund to the previous purchaser double the amount of the price paid by him).—So also when a man knowingly sells a defective article as free from defects.—(Yājña. 2. 257.)

NOTES

'*Also made to refund*, etc.'—This (clearly stated by Nārada below) has been taken as implied here also, by the particle '*cha.*'—(*Aparārka.*)

14. नारद 8. 8.] अन्यहस्ते तु विक्रीतं योऽन्यस्मै तत् प्रयच्छति ।
द्रव्यं तद्द्विगुणं दाप्यो विनयं तावदेव तु ॥

14. When a man sells an article to one person, and afterwards delivers it to another, he shall be compelled to repay twice the price to the purchaser, and a fine of an equal amount to the king.—(Nārada, 8. 8 ; in *Aparārka*, p. 830.)

15. नारद 8. 7.] निर्दोषं दर्शयित्वा तु सदोषं यः प्रयच्छति ।
मूल्यं तु द्विगुणं दाप्यो विनयं तावदेव तु ॥

15. When a man shows one thing, which is flawless, to the intending purchaser, and afterwards delivers to him another thing, which is defective,—he shall be compelled to repay to the purchaser twice the price paid for it, and a fine of an equal amount to the king.—(Nārada, 8. 7 ; in *Vivādaratnākara*, p. 192.)

16. बृहस्पति 18. 4.] ज्ञात्वा सदोषं यः पण्यं विक्रीणीताविचक्षणः ।
तदेव द्विगुणं दाप्यस्तत्समं विनयं तथा ॥

16. The foolish man who, knowing a thing to be defective, sells it (without mentioning the defect), shall be compelled to pay twice its value to the purchaser, and a fine of the same amount to the king.—(Bṛhaspati 18.4 ; in *Vivādaratnākara*, p. 192.)

17. बृहस्पति 18. 5.] मत्तोन्मत्तेन विक्रीतं हीनमूल्यं भयेन वा ।
अस्वतन्त्रेण मूढेन त्याज्यं तस्य पुनर्हरेत् ॥

17. What has been sold by one intoxicated or insane, or at a very low price, or under the impulse of fear, or by one not his own master, or by an idiot,—shall be given up by the purchaser ; or it may be recovered from him by the seller, by forcible means.—(Bṛhaspati, 18. 5; in *Vivādaratnākara*, p. 193.)

NOTES

'*By the seller.*'—This has been added by *Vivādaratnākara* (p. 193), which remarks that this rescission can take place even after the lapse of ten days—which is the period fixed for Rescission in general.

18. नारद 8. 10.] दत्तमूल्यस्य पण्यस्य विधिरेष प्रकीर्तितः ।
अदत्तेऽन्यत्र समयात् न विक्रेतुरतिक्रमः ॥

18. All these rules apply to cases where the price has been paid by the purchaser. Until the price has been paid, no blame can attach to the seller, except when there is an agreement to the contrary.—(Nārada, 8. 10 ; in *Vivādaratnākara*, p. 194.)

NOTES

'*Agreement*'—to the effect that 'as soon as the sale has been verbally settled, even though the price may not be paid, it shall not be subject to rescission,'- or that 'the price shall be paid after a month.'—If there has been some such agreement, then, even though the price may not have been paid, if the seller does any of those things that have been detailed above, he becomes liable to punishment.

19. नारद] सत्यङ्कारकृतं द्रव्यं द्विगुणं प्रतिपादयेत् ॥

19 When, for the purpose of clinching a bargain, the purchaser has paid earnest-money to the seller, — if the transac-

tion should fail by reason of anything done by the seller, — he shall be made to repay to the purchaser double the earnest money received by him. —(Nārada in *Aparārka*, p. 830; but attributed to Yājñavalkya by *Smṛtichandrikā*, p. 516.)

20. व्यास] सत्यङ्कारं च यो दत्त्वा यथाकालं न दृश्यते ।
पण्यं भवेन्निसृष्टं तत् दीयमानमगृह्णतः ॥

20. After having paid the earnest-money, if the purchaser does not come forward to receive the article sold,—the article becomes relinquished by him and he forfeits the earnest-money.—(Vyāsa in *Smṛtichandrikā*, p. 516.)

21. नारद 8. 12.] लाभार्थं वणिजां सर्वपण्येषु क्रयविक्रयः ।
स च लाभोऽर्घमासाद्य महान् भवति वा न वा ॥
तस्माद् देशे च काले च प्रक्रमेतार्थविद् वणिक् ।
न जिह्मेन प्रवर्तेत श्रेयानेष वणिक्पथः ॥

21. It is for the sake of profit that merchants carry on the buying and selling of all sorts of merchandise ; that profit is in proportion to the high or low prices paid. Merchants therefore shall fix a fair price for their merchandise, in accordance with the nature of the locality and the season,—and refrain from dishonest dealings. Such is the right method of trade.—(Nārada, 8. 12.)

RESCISSION OF PURCHASE

22. मनु 8. 222-223. See 8 above.

23. कात्यायन—See 7 above.

24. कात्यायन] क्रीत्वा चानुशयात् पण्यं त्यजेद्दोह्यादि यो नरः ।
अदुष्टमेव काले तु स मूल्याद्दशमं वहेत् ॥

24. Having purchased a milch cattle or such things, if the purchaser repents of it, and returns it,—though it is flawless,—he should suffer the penalty of having to pay a tenth part of that price paid.—(Kātyāyana in *Vivādachintāmaṇi*, p. 92 and in *Smṛtichandrikā*, p. 512.)

NOTES

The penalty here prescribed—the tenth part of the price—is meant for those cases where the article sold is such as does not suffer from being used. For cases where the article is such as is liable to suffer from use, the penalty to be paid is the *sixth* part of the price, as below.—(*Vīramitrodaya*, p. 435.) *Vivādaratnākara* has taken a different view [see Notes on the next section.]

25. कात्यायन] क्रीत्वागच्छन्ननुशयं क्रयी हस्तमुपागतम् ।
षड्भागं तस्य मूल्यस्य दत्त्वा क्रेयं त्यजेद्भृगुः ॥

25. Having purchased an article, if the purchaser repent of it after it has come to his hands, he may relinquish the article after paying a sixth part of the price paid—says Bhṛgu.—(Kātyāyana in *Vivādachintāmaṇi*, p. 92; in *Smṛtichandrikā*; in *Vīramitrodaya*, p. 435.)

NOTES

'*Come to his hands.*'—This shows that the higher penalty of 'sixth part of the price' is to be paid, if the man returns the article *after having received delivery of it*,—and the lower penalty of *the tenth part* (preceding section), if he seeks rescission of the sale *before* the article has come to his hands.—(*Vivādaratnākara*, 8. 197.)

26. नारद] दीयमानं न गृह्णाति क्रीतं पण्यं च यः क्रयी ।
स एवास्य भवेद्दोषो विक्रेतुर्योऽप्रयच्छतः ॥

26. If a purchaser refuses to accept delivery of the article sold to him, he shall suffer the same penalties as those prescribed for the seller refusing to deliver the goods sold by him.—(Nārada in *Smṛtichandrikā*, p. 513.)

27. नारद] क्रीत्वा नानुशयं कुर्याद् वणिक् पण्यविचक्षणः ।
क्षयं वृद्धिं च जानीयात् पण्यानां यस्य यादृशी ॥

27. The wise merchant, having made a purchase, shall not repent of it; he should find out, beforehand, the likely profit and loss on the merchandise.—(Nārada in *Vivādaratnākara*, p. 198.)

28. नारद 9. 4.] क्रेता पण्यं परीक्षेत प्राक् स्वयं गुणदोषतः ।
परीक्षाभिमतं क्रीतं विक्रेतुर्न भवेत्पुनः ॥

28. The intending purchaser shall, before purchasing an article, examine it, in order to find out its good and bad points. When a thing has been examined and approved of and then purchased, it cannot be returned to the seller.—(Nārada, 9.4 ; in *Vivādachintāmaṇi*, p. 91.)

29. बृहस्पति 18. 3.] परीक्षेत स्वयं पण्यमन्येषां च प्रदर्शयेत् ।
परीक्षितं बहुमतं गृहीत्वा न पुनस्त्यजेत् ॥

29. The purchaser shall examine an article himself and also show it to others ; when after examining it and having it approved by several men, he has purchased it, he cannot return it.—(Bṛhaspati, 18. 3 ; in *Vivādachintāmaṇi*, p. 91.)

30. व्यास] चर्मकाष्ठेष्टकासूत्रधान्यासवरसस्य तु ।
वसुकुप्यहिरण्यानां सद्य एव परीक्षणम् ॥

30. Leather, wood, yarn, grains, wines, liquids, cloth, gold, silver and other metals,—these commodities should be examined immediately on the spot.—(Vyāsa in *Smṛtichandrikā*, p. 517 and in *Vīramitrodaya*, p. 433.)

31. नारद 9. 5-7.] त्र्यहाद् दोह्यं परीक्षेत पञ्चाहाद्वाह्यमेव च ।
मुक्तावज्रप्रबालानां सप्ताहं स्यात् परीक्षणम् ॥
द्विपदामर्धमासं च पुंसां तद्द्विगुणं स्त्रियाः ।
दशाहं सर्वबीजानामेकाहं लोहवाससाम् ॥
अतोऽर्वाक्पण्यदोषस्तु यदि सञ्जायते क्वचित् ।
विक्रेतुः प्रतिदेयं तत् क्रेता मूल्यमवाप्नुयात् ॥

31. Milch cattle may be tested for three days; beasts of burden for five days ; in the case of pearls, diamonds, corals and other precious stones, the period of testing may extend to seven days;—male slaves shall be tested for a fortnight; and the female slaves for a month ; grains of all sorts, for ten days ; iron and cloth, for one day.—If before the expiry of these periods, a defect should appear in the commodity, it should be returned to the seller, and the purchaser shall receive the refund of the price he had paid for it.—(**Nārada**, 9. 5-7 ; in *Smṛtichandrikā*, p. 517.)

32. याज्ञवल्क्य 2. 177.] दशैकपञ्चसप्ताहमासत्र्यहार्धमासिकम् ।
बीजायोवाह्यरत्नस्त्रीदोह्यपुंसां परीक्षणम् ॥

32. Seeds and grains may be examined for ten days ; iron for one day ; beasts of burden for five days ; precious stones for seven days ; female slaves for a month ; milch cattle for three days and male slaves for fifteen days.—(Yājña. 2. 177.)

NOTES

All these rules refer to cases where the thing has been purchased without previous examination—says *Vivādaratnākara*, p. 197.

33. कात्यायन] अविज्ञातं तु यत्क्रीतं दुष्टं पश्चाद् विभावितम् ।
क्रीतं तत्स्वामिने देयं पण्यं कालेऽन्यथा न तु ॥

33. When an article has been purchased unwittingly, without due examination,—if it is found to be defective, it may be returned to the seller ; if within the period fixed for such examination, not otherwise.—(Kātyāyana in *Vivādaratnākara*, p. 199 ; *Vivādachintāmaṇi*, p. 90 and *Smṛtichandrikā*, p. 518.)

34. याज्ञवल्क्य 2. 258.] क्षयं वृद्धिं च वणिजा पण्यानामविजानता ।
क्रीत्वा नानुशयः कार्यः कुर्वन् षड्भागदण्डभाक् ॥

34. If a merchant, not knowing the likely profit and loss involved, has purchased a commodity, he shall not seek to rescind the purchase. If he does so, he is liable to be fined the sixth part of the price paid (according to *Aparārka*).

According to the *Mitākṣarā*, the meaning of the text is as follows :—

When a commodity has been sold and bought after due examination, the purchaser may ask for its rescission within the prescribed time, only if he finds out after the sale that the price of the commodity, at the rates prevalent at the time of the sale, should be lower than what he has paid ;—and the seller may ask for its rescission only if he finds out that the price should be higher than what he has charged.—If either of them acts contrary to this, he should be fined the sixth part of the price paid.—(Yājña. 2. 258.)

NOTES

There are only three reasonable grounds for rescission—(1) Detection of some defect in the commodity, (2) too high price, (3) too low price. Without any of these reasons, if any party asks for rescission, even within the prescribed time, he should be fined. But even when the above grounds are present, if the rescission is asked for after the lapse of the prescribed time, the party asking for it shall be fined.—(*Mitākṣarā.*)

35. नारद 9. 2-3.] क्रीत्वा मूल्येन यः पण्यं दुष्क्रीतं मन्यते क्रयी ।
विक्रेतुः प्रतिदेयं तत् तस्मिन्नेवाह्न्यविक्षतम् ॥
द्वितीयेऽह्नि ददत् क्रेता मूल्यात् त्रिंशांशमावहेत् ।
द्विगुणं तु तृतीयेऽह्नि परतः क्रेतुरेव तत् ॥

35. Having purchased a commodity for a certain price, if the purchaser thinks that he has not done well in making the purchase, he should return it, in the same condition, to the seller, on the same day ; if he return it on the second day, the purchaser shall suffer the thirtieth part of the price paid ; if on the third day, he shall suffer double of the thirtieth part ; after the third day, the thing must remain with the purchaser.—(Nārada, 9. 2-3 ; in *Aparārka*, p. 830.)

NOTES

This rule is meant to be applicable to the case where the article, even after being *bought*, still continues to remain 'merchandise,' in the sense that it is laid out for sale by the tradesman who bought it from a fellow-trader only for selling it on his own account, *i.e.*, to cases of mutual transaction among tradesmen themselves. In all other cases, the rule is as laid down by Manu, 8. 222.—(*Medhātithi* on Manu, 8. 222.)

'*In the same condition*'—If the article has been damaged in any way, the purchaser shall pay to the seller what may be adjudged by arbitrators to be the cost of repairing that damage.—(*Smṛtichandrikā*, p. 519.)

This rule refers to such commodities as suffer from use.—(*Vivādaratnākara*, p. 196.)—It applies to those commodities for which the time fixed for examination is *three days*.—(*Vivādachintāmaṇi*, p. 92.)

'*Thinks*'—This implies that the actual presence of defects in the commodity is not necessary ; it is sufficient if the purchaser *thinks* that he has made a foolish bargain.—(*Vīramitrodaya*, p. 435.)

36. नारद 9. 7.] परिभुक्तं तु यद्वासः क्लिष्टरूपं मलीमसम् ।
सदोषमपि यत्क्रीतं विक्रेतुर्न भवेत् पुनः ॥

36. A worn garment, in a ragged condition and soiled with dirt, cannot be returned to the seller, if it was in that defective condition at the time of the sale.—(Nārada, 9. 7.)

NOTES

This applies also to things (other than garments) which have been knowingly purchased in a defective condition.—(*Vivādaratnākara*, p. 200.)

37. मनु 8. 203.] नान्यदन्येन संसृष्टरूपं विक्रयमर्हति ।
न सावद्यं न च न्यूनं न दूरे न तिरोहितम् ॥

37. A commodity should not be sold, if it is mixed up with another, or without substance, or defective, or at a distance, or concealed.—(Manu, 8. 203.)

NOTES

This points out some of the defects the presence whereof would justify the rescission of a sale.—(*Smṛtichandrikā*, p. 520.)

If a seller of bipeds and quadrupeds has concealed the fact of the animal suffering from leprosy and such diseases, he shall be fined 12 *Paṇas*.—Such animals can be returned till the lapse of a month and a half; and slaves can be returned till the lapse of a year.—(*Arthashāstra*, 3.15.)

The *Arthashāstra* has the following rules regarding the rescission of marriage-contracts :

(*a*) In the case of the three higher castes, a marriage-contract can be rescinded only till such time as the 'Hand-joining ceremony' has not been performed;—in the case of Shūdras, it can be done till such time as the marriage has not been consummated.—Even after these if any very serious defect is discovered in either party, the marriage can be rescinded;—but never after children have been born.—(*Arthashāstra*, 3. 15.)

(*b*) If a man has given away his daughter in marriage, without informing the other party of any serious defects in the girl,—he shall be fined 96 *Paṇas* and shall be made to refund any nuptial fee and dowry that may have been received.—If the bridegroom's party have similarly concealed a defect in him, he shall be fined 192 *Paṇas* and shall forfeit the nuptial fee and dowry that may have been paid.

CHAPTER XIV

BOUNDARIES

DEFINITIONS

1. कात्यायन] आधिक्यं न्यूनता चांशे अस्तिनास्तित्वमेव च ।
अभोगभुक्तिः सीमा च षड् भूवादस्य हेतवः ।

1. In connection with lands there are six kinds of dispute —(*a*) relating to excess, (*b*) relating to decrease, (*c*) relating to presence, (*d*) relating to absence, (*e*) relating to possession, and (*f*) relating to boundaries.—(Kātyāyana in *Mitākṣarā*, p. 875.)

2. नारद] ध्वजिनी मत्स्यिनी चैव नैधानी भयवर्जिता ।
राजशासननीता च सीमा पञ्चविधा स्मृता ॥

2. Boundaries are of five kinds: (*a*) 'Flagged,' (*b*) 'Fished,' (*c*) 'Buried,' (*d*) 'Free from fear,' (*e*) 'Ordained by royal edict.'–(Nārada in *Vivādaratnākara*, p. 214 and *Mitākṣarā*, p. 874.)

NOTES.

Boundaries have been divided into four classes—(1) Boundary of countries, (2) Boundary of villages, (3) Boundary of fields, and (4) Boundary of houses.—(*Mitākṣarā*, 2.150.)

'*Flagged*'—*i.e.*, marked by trees;—'*Fished*'—marked by a streamlet;—'*Buried*'—marked by bones and other things buried under the ground;—'*Free from fear*'—that which has been fixed amicably by the parties concerned;—'*Ordained by royal edict*'—which is fixed by the king in the absence of witnesses and other evidence.—(*Vivādaratnākara*, p. 214.)

3. व्यास] निम्नोन्नता च ध्वजिनी नैधानी राजकारिता ।
ग्रामयोरुभयोर्मध्ये गर्तः सीमाप्रवर्तकः ।
शरकुब्जकवल्मीका यत्र देवगृहाणि च ॥
अश्मकूटाश्च दृश्यन्ते सीमासोक्ता समुन्नता ।

ग्रामयोरुभयोः सीम्नि वृक्षा यत्र समुन्नताः ।
समुच्छ्रिता ध्वजाकारा ध्वजिनी सा प्रकीर्तिता ॥
इष्टकांगारसिकताः शर्करास्थिकपालिकाः ।
निहिता यत्र दृश्यन्ते नैधानी सा प्रकीर्तिता ॥
साक्ष्यभावाद् द्वयोर्यत्र प्रभुणा परिकल्पिता ।
सामन्तानुमता सीमा सा ज्ञेया राजकारिता ॥

3. There are six kinds of Boundary : (*a*) '*Low*'—in the form of a ditch ;—(*b*) '*High*'—in the shape of grass-hedge or ant-hill, or temple or a stone-heap ;—(*c*) '*Flagged*'—marked by high flag-like trees ;—(*d*) '*Buried*'—in the shape of bricks or coals or sand or pebbles or bones or potsherds, buried under the ground ;—(*e*) '*Ordained by royal edict*'—fixed by the king in the absence of all kinds of evidence and accepted by the neighbours.—(Vyāsa in *Vivādaratnākara*, pp. 215-216.)

4. बृहस्पति] निवेशकाले कर्तव्यः सीमाबन्धविनिर्णयः ।
प्रकाशोपांशुचिह्नैश्च लक्षितः संशयापहः ॥

4. At the time of the foundation of a village, its boundaries should be distinctly indicated by means of visible as well as invisible marks.—(Bṛhaspati, 19. 25 ; in *Vivādaratnākara*, p. 202.)

5. मनु 8. 246-248.] सीमावृक्षांस्तु कुर्वीत न्यग्रोधाश्वत्थकिंशुकान् ।
शाल्मलीतालसालांश्च क्षीरिणश्चैव पादपान् ॥
गुल्मान् वेणूंश्च विविधान् शमीवल्लीस्थलानि च ।
शरान् कुब्जकगुल्मांश्च तथा सीमा न नश्यति ॥
तडागान्युदपानानि वाप्यः प्रस्रवणानि च ।
सीमासन्धिषु कार्याणि देवतायतनानि च ॥

5. The king shall plant trees on the boundary—such as the *Nyagrodha*, the *Ashvattha*, the *Kimshuka*, the *Shalmālī*, the *Sāla*, the *Tāla*, as also plants with milky juice ;—also thickets, bamboos of various kinds, the *Shamī*-tree, creepers and mounds, reeds and *Kubjaka* thickets ;—tanks, water-reservoirs, ponds, fountains and temples shall be set up on the boundary-lines.—(Manu, 8. 246—248.)

6. बृहस्पति 9. 3-4.] कूपवापीतडागानि चैत्यारामसुरालयाः ।
स्थलनिम्ननदीस्रोतःशरगुल्माश्मराशयः ॥
प्रकाशचिह्नान्येतानि सीमायां कारयेत् सदा ।
निहितानि तथान्यानि यानि भूमिर्न भक्षयेत् ॥

6. Wells, tanks, pools, large trees, gardens, temples, mounds, channels, river-course, reeds, shrubs, piles of stones; by such visible signs a boundary-line shall be marked as also such other marks buried underground as are not likely to be eaten up by the earth.—'Bṛhaspati, 19. 3–4; in *Vivādaratnākara*, p. 203.)

7. मनु 8. 249-251.] उपच्छन्नानि चान्यानि सीमालिङ्गानि कारयेत् ।
अश्मनोऽस्थीनि गोवालांस्तुषान् भस्मकपालिकाः ॥
करीषमिष्टकाङ्गारान् शर्करा बालुकास्तथा ।
यानि चैवम्प्रकाराणि कालाद् भूमिर्न भक्षयेत् ॥
तानि सन्धिषु सीमायामप्रकाशानि कारयेत् ॥

7. The king shall set up also hidden boundary-marks:— such as stones, bones, cow's hair, chaff, ashes, potsherds, dry cow-dung, bricks, cinders, pebbles, sand and other such like things which the earth may not eat up in time; these he shall secretly set up on boundary-lines.—(Manu, 8. 249—251.)

8. बृहस्पति 19. 5-7.] करीषास्थितुषाङ्गारशर्कराश्मकपालिकाः ।
सिकतेष्टकगोबालकार्पासास्थीनि भस्म च ॥
प्रक्षिप्य कुम्भेष्वेतानि सीमान्तेषु निधापयेत् ।
ततः पेगण्डबालानां प्रयत्नेन प्रदर्शयेत् ॥
वार्धक्ये च शिशूनां ते दर्शयेयुस्तथैव च ॥

8. Dry cow-dung, bones, chaff, cinders, stones, potsherds sands, bricks, cow's hair, cotton-seeds and ashes:—after placing these substances in jars he shall deposit them underground, at the extremities of the boundary. These should be pointed to youths and children, who growing old, shall show them to their own children.—(Bṛhaspati, 19. 5–7, in *Vivādaratnākara*, p. 204.)

SETTLING BOUNDARY-DISPUTES

9. नारद 11. 4-5.] समुन्नयेयुः सीमानं लक्षणैरुपलक्षिताम् ।
तुषाङ्गारकपालास्थिकूपैरायतनद्रुमैः ॥
अभिज्ञानैश्च वल्मीकैः स्थलनिम्नोन्नतादिभिः ।
केदारारामममार्गैश्च पुराणैः सेतुभिस्तथा ॥

9. The boundary shall be determined in accordance with such old marks as chaff, cinders, potsherds, wells, sanctuaries, trees, ant-hills, artificial mounds, slopes, hills and the like, as also fields, gardens, roads and old dikes.—(Nārada, 11. 4-5 ; in *Vivādaratnākara*, p. 210.)

10. नारद 11. 6.] निम्नगापहृतोत्सृष्टनष्टचिह्नासु भूमिषु ।
तत्प्रदेशानुमानैश्च प्रमाणैर्भोगदर्शनैः ॥
सीमां समुन्नयेयुः ॥

10. When a piece of land has been carried away by a stream, or abandoned, or when the boundary-marks have been destroyed, the boundary shall be determined by inferences drawn from a survey of the locality, and according to traces of possession held by the owner.—(Nārada, 11.6 ; in *Vivādaratnākara*, p. 205.)

NOTES

'*Survey, etc., etc.*'—On the basis of such proofs as may be found to the effect that 'the land in dispute was situated at the distance of 1000 'rods' to the west of the village,'—or on proofs adduced in support of possession from time immemorial.—(*Mitākṣarā*, 2. 152.)

11. मनु 8. 245 and 252.] सीमां प्रति समुत्पन्ने विवादे ग्रामयोर्द्वयोः ।
ज्येष्ठे मासि नयेत् सीमां सुप्रकाशेषु सेतुषु ॥
एतैर्लिङ्गैर्नयेत् सीमां राजा विवदमानयोः ।
पूर्वभुक्त्या च सततमुदकस्यागमेन च ॥

11. When a dispute regarding boundaries arises between two villages, the king shall determine the boundary during the month of *Jyeṣṭha* when the land-marks would be distinctly visible (Manu 8. 245) ;—by such marks as trees and the rest

(see above) ; as also on the basis of long-continued possession 'and by flowing water-streams.'—(Manu, 8. 252.)

NOTES

'*Long-continued possession,*'—*i.e.*, the beginning of which cannot be traced.—'*Water-streams,*'—when a water-stream divides two villages, if, in one part of the village, that stream is found to be accepted as the boundary, and there is dispute in another part,—in this case the stream should be accepted as the indicative of the true boundary in the latter case also. Or the meaning may be that when a part of a village has been cut off by a running stream, that same stream shall continue to serve as the boundary between the two villages,—provided that the portion cut off is a small one (see below).—(*Medhātithi.*)

12. मनु 8. 253.] यदि संशय एव स्याल्लिङ्गानामपि दर्शने ।
साक्षिप्रत्यय एव स्यात् सीमावादविनिर्णयः ॥

12. If, even on the inspection of the marks, there should be a doubt, the settlement of the dispute shall depend on witnesses.—(Manu, 8. 253.)

NOTES

In cases where the marks are doubtful, or where there are no marks at all, the boundary can be determined only on the basis of oral testimony.—(*Medhātithi.*)

13. कात्यायन] तस्मिन् भोगः प्रयोक्तव्यः स च साक्षिषु तिष्ठति ।
लेख्यारूढश्चेतरश्च साक्षी मार्गद्वयान्वितः ॥

13. In the absence of marks, possession has to be adduced as proof ; and the proving of possession is dependent upon witnesses,—either those entered on a document or others.—(Kātyāyana in *Vivādaratnākara*, p. 205.)

14. बृहस्पति 19. 14.] आगमं च प्रमाणं च भोगं कालं च नाम च ।
भूभागलक्षणं चैव ये विदुस्तेऽत्र साक्षिणः ॥

14. In a dispute of this kind, only such witnesses are admissible as know the title of acquisition, the size, the deviation of possession, the name and the characteristics of land in the locality.—(Bṛhaspati, 19. 14 ; in *Smṛtichandrikā*, p. 537.)

15. मनु 8. 254-255.] ग्रामेयककुलानां च समक्षं सीम्नि साक्षिणः ।
प्रष्टव्याः सीमलिङ्गानि तयोश्चैव विवादिनोः ॥
ते पृष्टास्तु यथा ब्रूयुः समस्ताः सीम्नि निश्चयम् ।
निबध्नीयात्तथा सीमां सर्वांस्तांश्चैव नामतः ॥

15. Witnesses regarding boundaries shall be questioned in regard to the boundary-marks, in the presence of the inhabitants of the villages, and also of the two contending parties.—The opinion that, on being questioned, they unanimously declare in regard to the boundary,—according to that the king shall lay down the boundary and also record the names of the witnesses. – (Manu, 8. 254-255.)

16. मनु 8. 258.] साक्ष्यभावे तु चत्वारो ग्रामसीमान्तवासिनः ।
सीमाविनिर्णयं कुर्युः प्रयता राजसन्निधौ ॥

16. In the absence of witnesses, four honest inhabitants of neighbouring villages shall make the determination of the boundary, in the presence of the king. – (Manu, 8. 258.)

17. कात्यायन] तेषामभावे सामन्ता मौलवृद्धोद्धृतादयः ।

17. In the absence of witnesses, the inhabitants of neighbouring villages, (*a*) 'natives,' (*b*) 'experienced persons,' (*c*) 'well-informed persons,' and others.—(Kātyāyana in *Vivādaratnākara*, p. 206.)

NOTES

The terms '*maula*' (native), '*vṛddha*,' ('experienced.') and '*uddhṛta*' ('well-informed') have been thus explained by Kātyāyana himself. (*a*) Those persons are called '*maula*' who, originally inhabitants of the neighbouring villages, had gone out and settled elsewhere ;—(*b*) those are called '*vṛddha*' who irrespective of their age, endowed with all manly qualities, were present at the time of the first delimitation of the boundary ;—(*c*) those are called '*uddhṛta*' who, though not present at the delimitation, nor witnesses to possession, have heard of both from other sources.—(*Vivādaratnākara*, p. 214 and *Smṛtichandrikā*, p. 539.)

18. कात्यायन] ग्रामो ग्रामस्य सामन्तः क्षेत्रं क्षेत्रस्य कीर्तितम् ।
गृहं गृहस्य निर्दिष्टं समन्तात् परिरभ्य च ॥

18. In disputes relating to *villages* the inhabitants of neighbouring *villages* are to be examined ; in disputes relating

to fields, the cultivators of adjoining fields; in disputes relating to houses, the inhabitants of neighbouring houses.—(Kātyāyana in *Vivādaratnākara*, p. 213 and in *Smṛtichandrikā*, p. 545.)

19. बृहस्पति] तदुत्पन्नास्तु सामन्ताः येऽन्ये देशान्तरस्थिताः ।
मौलास्तु ते समुद्दिष्टाः प्रष्टव्याः कार्यनिर्णये ॥

19. Persons born in the neighbouring villages, though living abroad, are held to be 'natives' of the place; and those should be consulted in regard to the determination of boundaries.—(Bṛhaspati, 19. 12; in *Vivādaratnākara*, p. 213.)

20. कात्यायन] स्वार्थसिद्धौ प्रदुष्टेषु सामन्तेष्वर्थगौरवात् ।
तत्संसक्तेषु कर्तव्य उद्धारो नात्र संशयः ॥
संसक्तसक्तदुष्टेषु तत्संसक्ताः प्रकीर्तिताः ।
सामन्ताः साधनं पूर्वमनिष्टोक्तौ गुणान्विताः ।
द्विगुणास्तूत्तरा ज्ञयास्ततोऽन्ये त्रिगुणा मताः ॥

20. If the inhabitants of the neighbouring villages are suspected to be unreliable, and the matter in dispute is an important one, the king shall consult the inhabitants of the next adjoining villages;—if these latter also are suspected to be unreliable, he shall question those of villages next to those latter.—(Kātyāyana in *Vivādaratnākara*, pp. 207 and 213.)—Where one neighbour would suffice, the king shall question two inhabitants of the next adjoining villages, and three inhabitants of these next to these latter; such should be the proportionate number.—(Kātyāyana in *Vivādaratnākara*, p. 208, and *Smṛtichandrikā*, p. 540.)

NOTES

It is not necessary for the witnesses to be proved to be unreliable; mere suspicion regarding their veracity should be enough—says *Vivādaratnākara* (p. 208).

21. नारद 11. 2-3.] गृहक्षेत्रविवादेषु सामन्तेभ्यो विनिर्णयः ।
बृहस्पति 19. 8-9.] नगरग्रामगणिनो ये च वृद्धतमा नराः ॥

कीनाशशिल्पिभृतका गोपव्याधोञ्छजीविनः ।
मूल्यखानककैवर्तकुल्या भेदकबाधकाः ॥
ग्रामसीमासु च बहिर्ये स्युस्तत्कृषिजीविनः ।
गोपाः शाकुनिका व्याधा ये चान्ये वनगोचराः ॥

21. In disputes regarding the boundary of a house or a field, the decision depends upon the neighbours, as also on the inhabitants of the village or town or members of the same community as the disputants—(Nārada, 11. 2 and Bṛhaspati, 19. 8);—and on other very elderly persons, husbandmen, artisans, servants, cowherds, hunters, gleaners, root-diggers, fishermen, kinsmen, channel-breakers, and mischief-makers.—(Bṛhaspati, 19. 9);—those living on the outskirts of the village, those cultivating fields in the neighbourhood, herdsmen, fowlers, hunters and other frequenters of the woods.—(Nārada, 11. 3; in *Vivādaratnākara*, pp. 208-209.)

22. मनु 8. 259-260.] सामन्तानामभावे तु मौलानां सीमसाक्षिणाम् ।
इमानप्यनुयुञ्जीत पुरुषान् वनगोचरान् ॥
व्याधान् शाकुनिकान् गोपान् कैवर्तान्मूलखानकान् ।
व्यालग्राहानुञ्छवृत्तीनन्यांश्च वनगोचरान् ॥

22. In the absence of such witnesses as the inhabitants of neighbouring villages, and original natives of the place (since gone abroad), the king may examine the following frequenters of forests: hunters, fowlers, cow-herds, fishermen, root-diggers, snake-catchers, gleaners, and other foresters.—(Manu, 8. 259-260.)

NOTES

'*Maulāḥ*' may be explained as 'experienced'; the meaning of the first sentence would then be that in the absence of experienced persons, ordinary neighbours may be regarded as reliable authority, and in the absence of these latter, the foresters, etc.—(*Medhātithi.*)

23. याज्ञवल्क्य 2. 150-151.] सीम्नो विवादे क्षेत्रस्य सामन्ताः स्थविरादयः ।
गोपाः सीमाकृषाणाश्च ये चान्ये वनगोचराः ॥
नयेयुरेते सीमानं स्थलाङ्गारतुषद्रुमैः ।
सेतुवल्मीकनिम्नास्थिचैत्याद्यैरुपलक्षिताम् ॥

23. In disputes relating to boundaries of a field, the boundary shall be determined by the inhabitants of neighbour-

ing villages, elderly persons, herdsmen, persons cultivating fields near the disputed boundary, and all those who live in the woods,—with the help of such marks as mounds, cinders, chaff, trees, dike, ant-hill, ditch, bones, pillar, and such other things (as bamboo, sands and so forth).—(Yājña. 2. 150-151.)

24. बृहस्पति 19. 10.] शपथैः शापिता स्वैः स्वैर्ब्रूयुः सीम्नि विनिश्चयम् ।
दर्शयेयुर्निधानानि तत्प्रमाणमिति स्थितिः ॥

24. All these persons, sworn on their respective oaths, shall depose as to the boundary and indicate the landmarks as proofs thereof.—(Bṛhaspati, 19. 10 ; in *Aparārka*, p. 762.)

NOTES

'*Respective oaths*'—As prescribed by Manu (8. 113) :—'The Brāhmaṇa should be made to swear by truth ; the Kṣattriya, by conveyances and weapons ; the Vaishya, by cattle, grains and gold ; and the Shūdra, by all sins.'

25. मनु 8. 256 & 261.] शिरोभिस्ते गृहीत्वोर्वीं स्रग्विणो रक्तवाससः ।
सुकृतैः शापिताः स्वैः स्वैर्नयेयुस्ते समञ्जसम् ॥
ते पृष्टास्तु यथा ब्रूयुः सीमासन्धिषु लक्षणम् ।
तत्तथा स्थापयेद्राजा धर्मेण ग्रामयोर्द्वयोः ॥

25. Placing earth upon their heads, wearing garland and red clothes, and being sworn by their respective meritorious deeds, they shall depose honestly—(Manu, 8. 256), as these, on being questioned in fairness, declare the marks of boundary-lines between two villages, even so shall the king fix it.—(Manu, 8. 261.)

NOTES

The plural number used here precludes the questioning of *two* witnesses,—not of *one* ; the admission of *one* being permissible in certain cases (see below 23), says *Mitākṣarā* (2. 152).

26. याज्ञवल्क्य 2. 152.] सामन्ता वा समा ग्रामाश्चत्वारोऽष्टौ दशापि वा ।
रक्तस्रग्वसनाः सीमां नयेयुः क्षितिधारिणः ॥

26. An even number of inhabitants of neighbouring villages—*four*, *eight* or *ten*—wearing red clothes and garlands

and placing earth on their heads,—shall determine the boundary.—(Yājña. 2. 152.)

NOTES

When there are no clear landmarks traceable, then the boundary is to be settled in this manner.—(*Mitākṣarā.*)

27. नारद 11. 910.] नैकः समुन्नयेत्सीमां नरः प्रत्ययवानपि ।
गुरुत्वादस्य कार्यस्य क्रियैषा बहुषु स्थिता ॥
एकश्चेदुन्नयेत् सीमां सोपवासः समुन्नयेत्।
रक्तमाल्याम्बरधरः क्षितिमारोप्य मूर्धनि ॥

27. The boundary should not be determined by any one man single-handed, even though he be reliable.—This work being an important one, its fulfilment depends upon several persons.—Should, however, a single man undertake to indicate the boundary, he must do so after having kept a fast, in a collected frame of mind, wearing a garland of red flowers and red clothes, having placed earth on his head.—(Nārada, 11. 9-10 ; in *Aparārka*, p. 762 and *Vivādaratnākara*, p. 211.)

NOTES

The prohibition regarding the single man is meant for those cases where no such man is available who enjoys the confidence of both parties—says *Mitākṣarā* (2. 152).

28. बृहस्पति 19. 11.] ज्ञातृचिह्नविनाशे तु एकोऽप्युभयसम्मतः ।
रक्तमाल्याम्बरधरो मृदमादाय मूर्धनि ॥
सत्यव्रतः सोपवासः सीमां सन्दर्शयेन्नरः ।

28. Where there are no witnesses and no landmarks, even a single person, accepted by both parties, may indicate the boundary after having kept a fast, wearing red garland and red clothes, placing earth upon his head, and adhering to truth.—(Bṛhaspati, 19. 11 ; in *Vivādaratnākara*, p. 211.)

NOTES

Regarding the method outlined in 23 and 23*a*, *Mitākṣarā* (2. 152) remarks that the final decision of the king on the basis of such deposition shall be with-

held for a month and a half; if during this time, nothing untoward happens to the deponent—either through an act of God or the king—which would be indicative of his having perjured himself,—then alone should his deposition be accepted as reliable and the matter decided accordingly, specially as a recourse to ordeals is not permitted in the case of disputes relating to land.

29. मनु 8. 265.] सीमायामविषह्यायां स्वयं राजैव धर्मवित् ।
प्रदिशेद् भूमिमेतेषामुपकारादिति स्थितिः ॥

29. In the event of the boundary being unascertainable, the righteous king shall himself assign to the parties their lands on the basis of advantages.—(Manu, 8. 265 and *Artha-shāstra*, 3. 9.)

NOTES

He shall then indicate the boundary in such a manner as to make the decision equally advantageous to both parties; so that if the lands assigned to one are larger in extent, those assigned to the other are more fertile.—(*Medhātithi.*)

The meaning is that if the king finds that the plot in dispute is likely to be more 'advantageous' to one party than the other, then he should assign it to the former.—(*Mitākṣarā*, 2. 153.)

30. याज्ञवल्क्य 2. 153.] अभावे ज्ञातृचिह्नानां राजा सीम्नः प्रवर्तकः ।

30. In the absence of witnesses and landmarks, the boundary can be determined by the king himself.—(Yājña. 2. 153; also Nārada, 11. 11.)

31. कात्यायन] त्यक्त्वा दुष्टांस्तु सामन्तानन्यैर्मौलादिभिः सह ।
सम्मिश्र्य कारयेत् सीमामेवं धर्मविदो विदुः ॥

31. If the persons called in to indicate the boundary are found to have deposed wrongly, through ignorance, the king shall reconsider the question with the help of other natives and experienced persons.—(Kātyāyana in *Mitākṣarā*, 2. 153.)

PERVERSE WITNESSES

32. कात्यायन] बहूनां तु गृहीतानां न सर्वे निर्णयं यदि ।
कुर्युर्भयाद्वा लोभाद्वा दाप्यास्तूत्तमसाहसम् ॥

32. If the large number of persons brought together to depose regarding the boundary refuse to speak out, either

through greed or through fear, they should be fined the highest amercement.—(Kātyāyana in *Aparārka*, p. 763 and in *Smṛti-chandrikā*, p. 546.)

NOTES

This rule applies to cases where the motive underlying their action is exceptionally dishonest.

33. कात्यायन] कीर्तिते यदि भेदः स्याद् दाप्यास्तूत्तमसाहसम् ।

33. If there is a divergence in their deposition, the witnesses shall be fined the highest amercement.—(Kātyāyana in *Smṛtichandrikā*, p. 546.)

34. विष्णु] कूटसाक्षिणां सर्वस्वापहारः कार्यः ।

34. Those who depose falsely should have their entire property confiscated.—(Viṣṇu in *Smṛtichandrikā*, p. 546.)

35. नारद] अथ चेदनृतं ब्रूयुः सामन्ताः सीमनिर्णये ।
सर्वे पृथक् पृथग् दण्ड्या राज्ञा मध्यमसाहसम् ॥

35. If the neighbours depose falsely in regard to the boundary, each of them should be fined the middle amercement.—(Nārada in *Smṛtichandrikā*, p. 547.)

36. कात्यायन] अज्ञानोक्तौ दण्डयित्वा पुनः सीमां विचारयेत् ।

36. If the neighbours called in to depose refuse to say anything, saying 'We do not know anything,' they should be fined and the enquiry regarding the boundary should be proceeded with.—(Kātyāyana in *Aparārka*, p. 763.)

37. शङ्खलिखित] सामन्तविरोधे अभिलेख्यप्रत्ययः । अभिलेख्यविरोधे ग्रामनगरवृद्धश्रेणिप्रत्ययः । ग्रामनगरवृद्धश्रेणिविरोधे दशवर्षभुक्तानुभुक्तम् । अन्यत्र राजविप्रस्वात् ।

37. If the neighbours contradict themselves, the case should be decided on the basis of documents; if there are contradictory documents, the king shall depend upon the

elderly people of the village and upon the community as a whole; if these contradict themselves, the case shall be decided on the basis of possession extending over ten years;—except in the case of property belonging to the Brāhmaṇa or to the king.—(Shañkha-Likhita in *Vivādaratnākara*, p. 208.)

38. नारद 11. 7-8.] अथ चेदनृतं ब्रूयुः सामन्ताः सीमनिर्णये ।
सर्वे पृथक् पृथग् दण्ड्या राज्ञा मध्यमसाहसम् ॥
मौलवृद्धादयस्त्वन्ये दण्डनीयाः पृथक् पृथक् ।
विनेयाः प्रथमे नैव साहसेनानृते तथा ॥

38. Should the neighbours depose falsely when called upon to depose regarding boundary disputes, they shall all be punished one by one, each having to pay the middle amercement.—The 'natives' and the 'experienced persons' and the rest shall each be fined the first amercement, if they depose falsely.—(Nārada, 11. 7-8 quoted in *Mitākṣarā*, 2. 153; *Smṛtichandrikā*, p. 547; *Aparārka*, p. 763.)

NOTES

The right reading for the second sentence is '*maulah, vṛddha*, etc.' as found in *Mitākṣarā* (2. 153), which adds that 'the rest' are meant to be 'herdsmen, bird-catchers' and the others mentioned before.

The 'falsity' of the statements made is established if they fail to show the landmarks to whose existence they have borne testimony,—or if a calamity befalls the deponent within a month and a half of the deposition.—(*Aparārka*, p. 763.)

39. याज्ञवल्क्य 2. 153.] अनृते तु पृथग् दण्ड्या राज्ञा मध्यमसाहसम् ॥

39. If they make false statements, they should each be fined the middle amercement.—(Yājña. 2.153.)

NOTES

'*Middle amercement*,'—*i.e.*, 540 *Kārṣāpaṇas* (*Mitākṣarā* and *Aparārka*). This penalty is for the 'neighbours'—says *Mitākṣarā*.

40. मनु 8. 257.] यथोक्तेन नयन्तस्ते पूयन्ते सत्यसाक्षिणः ।
विपरीतं नयन्तस्तु दाप्याः स्युर्द्विशतं दमम् ॥

40. If they decide in the right manner, they, being truthful witnesses, become purified; but if they decide wrongly

they should be made to pay a fine of two hundred each.—(Manu, 8. 257.)

NOTES

If, on reference to other proofs, and to other more reliable witnesses, it is found that the former witnesses had not deposed truthfully, each of them shall be fined two hundred.—(*Medhātithi.*)

'*Two hundred*'—*Kārṣāpaṇas* (says *Smṛtichandrikā*, p. 548).

41. मनु (?)] सामन्ताश्चेन्मृषा ब्रूयुः सेतौ विवदतां नृणाम् ।
सर्वे पृथक् पृथग् दण्ड्या राज्ञा मध्यमसाहसम् ॥

41. If the neighbours depose falsely in connection with disputes relating to boundary-dykes, each of them should be fined the middle amercement.—(Manu in *Vivādaratnākara*, p. 211 and *Vivādachintāmaṇi*, p. 95.)

BOUNDARIES ALTERED BY THE SHIFTING OF COURSE OF RIVERS

42. बृहस्पति 19. 17.] अन्यग्रामान् समाहृत्य दत्ताऽन्यस्य यदा मही ।
नद्योत्सृष्टा राजदत्ता यस्य तस्यैव सा मही ॥

42. The land abandoned by a river, and thereby transferred from one village to another,—or given away by the king,—belongs to that village towards which it has been abandoned.—(Bṛhaspati, 19. 17; in *Smṛtichandrikā*, p. 548.)

43. बृहस्पति 19. 20.] ग्रामयोरुभयोर्यत्र मर्यादा कल्पिता नदी ।
कुरुते दानहरणं [भाग्याभाग्यवशान्नृणाम्] ॥
एकत्र कूलपातं तु भूमेरन्यत्र संस्थितिम् ।
नदीतीरे प्रकुरुते तस्य तां न विचालयेत् ।

43. Where a river has been fixed as the boundary between two villages, and its encroachment on one side adds to the land on that side, this redistribution of land shall not be disturbed.—(Bṛhaspati, 19. 20; in *Smṛtichandrikā*, p. 549.)

NOTES

This refers to uncultivated land—says *Smṛtichandrikā* (p. 549).

44. बृहस्पति 19. 21.] क्षेत्रं ससस्यमुल्लङ्घ्य भूमिश्छिन्ना यदा भवेत् ।
नदीस्रोतःप्रवाहेण पूर्वस्वामी लभेत ताम् ॥

44. If the swift current of a river cuts off a cultivated plot of land with crops standing on it,– the crops shall be taken by the former owner.—(Bṛhaspati, 19. 21 ; in *Smṛtichandrikā*, p. 549.)

NOTES

The meaning rendered here is in accordance with the explanation given by *Smṛtichandrikā* (p. 549), which adds that after the crops have been taken away, the land shall belong to the owner of that village to which it has been carried by the river.

BOUNDARIES OF HOUSES, GARDENS, ETC.

45. याज्ञवल्क्य 2. 154.] आरामायतनग्रामनिपानोद्यानवेश्मसु ।
एष एव विधिर्ज्ञेयो वर्षाम्बुप्रवहादिषु ॥

45. Orchards, temple-grounds, tanks and wells, gardens and houses, as also rainwater drains—in regard to the boundaries of these also, the same rules are applicable as those laid down above (for fields).—(Yājña. 2. 154.)

46. मनु 8. 262.] क्षेत्रकूपतडागानामारामस्य गृहस्य च ।
सामन्तप्रत्ययो ज्ञेयः सीमासेतुविनिर्णयः ॥

46. In the case of fields, wells, tanks, gardens and houses,—the decision regarding boundaries is dependent upon neighbours.—(Manu, 8. 262.)

NOTES

'*Garden*'—stands for park-lands, as well as vegetable yards.—This text has been added with a view to preclude the evidence of hunters, fowlers and other foresters.—(*Medhātithi.*)

47. बृहस्पति 19. 24.] निवेशकालादारभ्य गृहवार्यापणादिकम् ।
येन यावद् यथाभुक्तं तस्य तन्न विचालयेत् ॥

47. A house, a pool, a shop or the like, having been used by a man since the time of the foundation (of the village or

town), shall not be taken from him or altered.—(Bṛhaspati, 19. 24 ; in *Vivādaratnākara*, p. 219.)

NOTES

This refers to the courtyard, gates and windows and other details appertaining to the house. These shall not be disturbed by the neighbours.—'*Since the time,*' etc.,—this shows that later additions may be disturbed if objected to by the neighbours.—(*Smṛitichandrikā*, p. 550.)

48. बृहस्पति 19. 25.] वातायनाः प्रणालीश्च तथा निर्व्यूहवेदिकाः ।
चतुःशालं स्यन्दनिकां प्राङ्निविष्टां न चालयेत् ॥

48. A window, or a water-spout, or bow-windows, or a platform or a courtyard, or a square of four buildings (or a house with doors on all sides), or eaves,—if it has been in existence since the foundation of the village or town,—shall not be interfered with.—(Bṛhaspati, 19. 25 ; in *Vivādaratnākara*, p. 219).

49. कात्यायन] दृष्टिपातं प्रणालीं च न कुर्यात् परवेश्मसु ।

49. One shall not erect a window or a water-spout towards another person's house.—(Kātyāyana in *Vivādaratnākara*, p. 219.)

50. बृहस्पति 19. 26.] वर्चःस्थानं वह्निचयं गर्तोच्छिष्टादिसेचनम् ।
अत्यारात् परकुड्यस्य न कर्त्तव्यं कदाचन ॥

50. A privy, a fire-place, a pit, or a receptacle for leavings and waste-water should never be set up very close to the wall of another person.—(Bṛhaspati, 19. 26.)

NOTES

There should be at least 3 feet of space left between the two.—(*Vivādaratnākara*, p. 220.)

51. कात्यायन] विण्मूत्रोदकचक्रं च वह्निश्वभ्रनिवेशनम् ।
अरत्निद्वयमुत्सृज्य परकुड्यान्निवेशयेत् ॥

51. Walls of privy and urinal, fire-place or a pit shall be set up at least 2 cubits removed from the wall of another person.—(Kātyāyana in *Vivādaratnākara*, p. 220.)

52. बृहस्पति 19. 27.] यान्त्यायान्ति जना येन पशवश्चानिवारिताः ।
तदुच्यते संसरणं न रोद्धव्यं तु केनचित् ॥

52. A passage by which men and animals come and go unprevented, is called a '*Path*'; and this shall not be obstructed by any one.—(Bṛhaspati, 19. 27; in *Vivādaratnākara*, p. 220.)

53. नारद 11. 15-16.] अवस्करस्थलश्वभ्रमस्यन्दनिकादिभिः ।
चतुष्पथसुरस्थानरथ्यामार्गं न रोधयेत् ॥

53. A road-crossing, a sanctuary and a public road shall never be obstructed by the setting up of rubbish-heaps, or raised platforms, or pits, or water-drains, or the eaves of a thatch or any such things.—(Nārada, 11. 15-16; in *Vivādaratnākara*, p. 220.)

NOTES

Should any one cause such obstruction, he should be fined the highest amercement.

'*Chatuṣpatha*,' is 'road-crossing' where 'four-roads' meet. But *Smṛtichandrikā* (p. 552) and *Vīramitrodaya* (p. 464) quote a text from *Kātyāyana* by which the '*Chatuṣpatha*' would be the 'public road, by which people pass at all times without any let or hindrance,' and '*rājamārga*,' which is generally rendered as 'public road,' would be 'that road by which people are under royal edict, allowed to pass only at fixed times.' This same text however, as read by *Vivādaratnākara*, p. 221, provides a definition of the '*rājamārga*' only as 'that road by which all men as well as quadrupeds pass at all times, without let or hindrance.'

54. शङ्खलिखित] मार्गक्षेत्रे पथि विसर्गो राजमार्गे रथपरिवर्तनं पूर्वमर्यादास्थापनं तोरणगृहरथ्यान्तरेषु त्रिपदं देवराजायतनेषु यथेष्टम् ॥

54. A space should always be left uncultivated in a field through which there is a path-way; on the public road, there must be space enough to allow of a chariot turning round; there should be three steps of space between a house and a pathway; there should be as much open space as possible around the temple and the King's palace.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 220.)

55. कात्यायन] यस्तत्र सङ्करश्वभ्रान् वृक्षारोपणमेव च ।
बृहस्पति 19. 28.] कामात् पुरीषं कुर्याच्च तस्य दण्डस्तु माषकः ॥

55. If a man intentionally obstructs roads and paths, by making a pit or planting trees or voiding excreta, he shall pay a

Māṣaka as fine.—(Bṛhaspati, 19. 28; also Kātyāyana in *Vivādaratnākara*, p. 221.)

56. मनु 9. 282.] समुत्सृजेद्राजमार्गे यस्त्वमेध्यमनापदि ।
स द्वौ कार्षापणौ दद्यादमेध्यं चाशु शोधयेत् ॥

56. If a man, except under abnormal circumstances, throws unclean things on the public road, he should pay a fine of two *Kārṣāpaṇas* and clean the road.—(Manu, 9. 282.)

57. मनु 9. 283.] आपद्गतोऽथवा वृद्धो गर्भिणी बाल एव वा ।
परिभाषणमर्हन्ति तच्च शोध्यमिति स्थितिः ॥

57. If it is done by a man in distress, or by one who is very old or by a pregnant woman, or by a child, —he shall be reprimanded.—(Manu, 9. 283.)

58. विष्णु 5. 106-107.] पथ्युद्यानोदकसमीपेष्वशुच्युत्करादित्यागे पणशतं (दण्ड्याः) तच्चापास्य ।

58. If one defiles the highway, or a garden, or a tank, he shall be fined a hundred *Paṇas*, and he must remove the filth. —(Viṣṇu, 5. 106.)

NOTES

This refers to cases where something very filthy has been thrown in—says *Vivādaratnākara*, p. 222.

59. कात्यायन 2. 153.] तटाकोद्यानतीर्थानि योऽमेध्येन विनाशयेत् ।
अमेध्यं शोधयित्वा तु दण्डयेत् पूर्वसाहसम् ॥

59. If one defiles a tank, a garden or a place of pilgrimage, by throwing unclean things, he should be made to cleanse it and also be fined the first amercement.—(Kātyāyana in *Smṛtichandrikā*, p. 553.)

60. याज्ञवल्क्य 2. 155.] मर्यादायाः प्रभेदे तु सीमातिक्रमणे तथा ।
क्षेत्रस्य हरणे दण्डा अधमोत्तममध्यमाः ॥

60. For cutting a boundary-dike, the penalty is the lowest amercement; for encroaching upon a boundary, the

highest amercement ; and for taking away a field (by means of threats), the middle amercement.—(Yājña. 2. 155.)

NOTES

According to *Arthashāstra* (3. 9) the penalty for cutting a boundary-dike is a fine of 24 *Paṇas.*

61. विष्णु] सीमाभेत्तारमुत्तमसाहसं दण्डयित्वा पुनः सीमां कारयेत् ।

61. If a man damages a boundary, he should be fined the highest amercement and made to repair the boundary.—(Viṣṇu in *Vivādaratnākara*, p. 223.)

62. शङ्खलिखित] सीमातिक्रमणेऽष्टसहस्रम् ।

62. If a man encroaches upon boundary he shall be fined a thousand and eight.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 223.)

NOTES

The word in the text is '*aṣṭasahasram*' which literally means 8,000 ; but *Vivādaratnākara* has explained it as 1,008.

63. वृद्धमनु] स्थापितां चैव मर्यादामुभयोर्ग्रामयोस्तथा ।
अतिक्रामन्ति ये दर्पात् ते दण्ड्या द्विशतं दमम् ॥

63. If a man, through arrogance, demolishes the boundary set up between two villages, he should be fined 200.—(Vṛddha-Manu in *Smṛtichandrikā*, p. 554.)

64. शङ्खलिखित] क्षेत्रमर्यादाभेदेऽष्टसहस्रम् ।

64. If one cuts a dike between two fields, he should be fined 1,008 (or 108, according to the reading of *Vivādaratnākara*)—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 223 and in *Smṛtichandrikā*, p. 554.)

65. मनु 8. 264.] गृहं तडागमारामं क्षेत्रं वा भीषया हरन् ।
शतानि पञ्च दण्ड्यः स्यात्, अज्ञानाद् द्विशतो दमः ॥

65. If a person, by intimidation, appropriates a house or a tank or a garden or a field, he shall be fined 500 ; but only 200, if he does it in ignorance.—(Manu, 8. 264.)

NOTES

The meaning is that if a man, in any manner, misappropriates a field which he knows to belong to another, he shall be fined 500. The amount of the fine shall vary according to the method of misappropriation.—(*Medhātithi.*)

66. शङ्खलिखित] क्षेत्रोदकाहरणेऽष्टशतम् ।

66. For taking away water from a field, the fine is 108.—(Shankha-Likhita in *Vivādaratnākara*, p. 223.)

67. कात्यायन] सीमामध्ये तु जातानां वृक्षाणां क्षेत्रयोर्द्वयोः ।
फलं पुष्पं च सञ्जातं क्षेत्रस्वामिषु निर्दिशेत् ॥

67. When trees have grown on the boundary-line, the fruits and flowers thereof belong to the owners of the fields on both sides of the boundary.—(Kātyāyana in *Vivādaratnākara*, p. 223 and *Vivādachintāmaṇi*, p. 98.)

68. कात्यायन] अन्यक्षेत्रेषु जातानां शाखा याऽन्यत्र संस्थिता ।
नारद 11. 14.] स्वामिनं तं विजानीयाद् यस्य क्षेत्रेषु संस्थिता ॥

68. If a tree growing in one man's field has its branches extending over another man's field, the tree belongs to the owner of the former field where the tree stands.—(Nārada, 11. 14 ; but Kātyāyana in *Vivādaratnākara*, p. 223, in *Smṛti-chandrikā*, p. 555, in *Vīramitrodaya*, p. 467 and *Aparārka*, p. 766.)

NOTES

All the authorities explain the text as above; with the exception of *Vivādaratnākara*, which reads '*samshṛtāḥ*' (or '*samsthitāḥ*') at the end and takes it 'with *shākhāḥ*' by which construction the meaning would be that 'the branches belong to the owner of the field whereto the branches have spread.'

69. कात्यायन] मेखलाभ्रमनिष्काशगवाक्षान्नोपरोधयेत् ।
प्रणालीं गृहवास्तुं च पीडयन्दण्डभाग् भवेत् ॥

69. The plinth, the water-channel, the balcony, the windows, the water-spout and the site of a house shall not be obstructed or encroached upon ; one who obstructs these should be punished.—(Kātyāyana in *Vivādaratnākara*, p. 219.)

NOTES

For '*bhramaniṣkāsa*' some people read '*dhumaniṣkāsa*' which means 'chimney.'

For obstructing the flow of water into a field through a long-existing channel, or for making a new channel in an improper manner, one shall suffer the lowest amercement.—(*Arthashāstra*, 3. 10.)

DIKES AND OTHER THINGS

70. नारद्] सेतुस्तु द्विविधो ज्ञेयः खन्यो बन्ध्यस्तथैव च ।
तोयप्रवर्तने खन्यो बन्ध्यः स्याद् विनिवर्तने ॥

70. Dikes are of two kinds—'ditch' and 'bund'; the *ditch* for bringing in water, and the *bund* for keeping out water.—(Nārada, 11. 18; in *Smṛtichandrikā*, p. 555.)

71. याज्ञवल्क्य 2. 156.] न निषेध्योऽल्पबाधस्तु सेतुः कल्याणकारकः ।
परभूमिं हरन् कूपः स्वल्पक्षेत्रो बहूदकः ॥

71. (*a*) The erection of a dike in the middle of another man's field is not to be forbidden, as the damage done is slight, while the advantage gained is considerable.—(*b*) The sinking of a well also in another man's field should not be forbidden; as while it takes very little land, it provides a plentiful supply of water.—(Yājña. 2. 156.)

72. याज्ञवल्क्य 2. 157.] स्वामिने योऽनिवेद्यैव क्षेत्रे सेतुं प्रवर्तयेत् ।
उत्पन्ने स्वामिनो भोगः, तदभावे महीपतेः ॥

72. If a man erects a dike in another man's field, without having obtained his permission,—any produce that may be due to that dike shall belong to the owner of the field, or failing him, to the king.—(Yājña. 2. 157.)

NOTES

All that this means is that the previous permission of the owner or, in his absence, of the king, should be obtained before the dike is erected.—(*Smṛtichandrikā*, p. 557.)

If a man erects a dike, or sinks a well, or sets up a temple or place of worship in another man's land—or sells or pledges an old dike or well or temple or place of worship,—or makes another person sell or pledge these,—he shall suffer the middle amercement—and those who see all this being done shall suffer the highest amercement.—(*Arthashāstra*, 3. 10.)

73. नारद 11. 20-21.] पूर्वप्रवृत्तमुत्सन्नमपृष्ट्वा स्वामिनं तु यः ।
सेतुं प्रवर्तयेत् कश्चिन्न स तत्फलभाग्भवेत् ॥
मृते तु स्वामिनि पुनः तद्वंश्ये वापि मानवे ।
राजानमामन्त्र्य ततः कुर्यात्सेतुप्रवर्तनम् ॥

73. If a man were to repair a dike erected long ago, but decayed,—without asking the permission of its owner,—he shall not be entitled to any profits arising from it.—After the death of the owner or of his heirs, he may repair the dike after having obtained the permission of the king to do so.—(Nārada, 11. 20-21 ; in *Smṛtichandrikā*, p. 557.)

74. कात्यायन] अस्वाम्यनुमतेनैव संस्कारं कुरुते तु यः ।
गृहोद्यानतटाकानां संस्कर्ता लभते न तु ।
व्ययं स्वामिनि चायाते न निवेद्य नृपे यदि ।
अथावेद्य प्रयुक्तस्तु तद्गतं लभते व्ययम् ॥

74. If, without the permission of its owner, one repairs a house, a garden, a tank,—he shall not recover the cost of the repairs from the owner, except when he has done the repairs with the sanction of the king.—(Kātyāyana in *Smṛtichandrikā*, p. 558 ; *Vivādaratnākara*, p. 225.)

NOTES

If the erector of the temple and such things has died and left no heirs, then these should be repaired either by the entire village-community or by some pious-minded persons. –(*Arthashāstra*, 3. 10.)

CULTIVATION OF LANDS

75. बृहस्पति 19. 29.] गृहीत्वा वाहयेत् काले वापगोपनसङ्ग्रहान् ।
अकुर्वन् स्वामिने दाप्यो मध्यं कृष्टसदन्तु सः ॥

75. When a man has leased a field, he shall sow and fence it and reap the harvest. If he fails to do this, he should be made to make good to the landlord, the value of the estimated average annual crop.—(Bṛhaspati, 19. 291 ; in (*Vivādaratnākara*, p. 229.)

76. याज्ञवल्क्य 2. 158.] फालाहतमपि क्षेत्रं यो न कुर्यान्न कारयेत् ।
स प्रदाप्योऽकृष्टसदं क्षेत्रमन्येन कारयेत् ॥

76. If, after having ploughed a field, the lessee fails to proceed with the cultivation, either himself or through another person, he shall be made to give up the produce of the uncultivated land, and the land shall be given to another person for cultivation.—(Yājña. 2. 158.)

77. बृहस्पति] मध्ये कृष्टे दमं तु सः ।

77. If the lessee abandons the field in the middle of agricultural operations, he shall be made to pay a fine.—(Bṛhaspati in *Smṛtichandrikā*, p. 559.)

78. व्यास] क्षेत्रं गृहीत्वा यः कश्चिन्न कुर्यान्न च कारयेत् ।
स्वामिने तत्सदं दाप्यो राज्ञो दण्डं च तत्समम् ॥

78. After having leased a field, if the lessee fails to cultivate it himself, or through another person, he should be made to pay the value of the estimated produce to the landlord, and an equal amount to the king as fine.—(Vyāsa in *Vivādaratnākara*, p. 229.)

79. व्यास] चिरावसन्ने दशमं कृष्यमाणे ततोऽष्टमम् ।
असंस्कृते तु षष्ठं स्यात् परिकल्प्य यथा स्थितिः ॥

79. If the land had been lying uncultivated for a long time, the lessee shall pay the value of the tenth part of the produce; if the land is one that has been under cultivation the value of the 8th part of the produce; if the land has been prepared by the tenant (but not sown), the value of sixth part of the produce.—(Vyāsa in *Vivādaratnākara*, p. 229 and *Vivādachintāmaṇi*, p. 102.)

NOTES

The value payable is that of the normal produce.—(*Vivādachintāmaṇi*, p. 102.)

80. नारद] अशक्तप्रेतनष्टेषु क्षेत्रिकेष्वनिवारितः ।
क्षेत्रं चेत् विकृषेत् कश्चित् अश्नुवीत स तत्फलम् ॥

80. If the lessee is either unable to cultivate the field, or dead or gone away and cannot be traced, if some one else

has cultivated the field, without any one objecting to it, the latter shall take the produce of the land.—(Nārada in *Vivādaratnākara*, p. 226.)

81. नारद 11. 25.] निष्कृष्यमाणे क्षेत्रे तु क्षैत्रिकः पुनराव्रजेत् ।
खिलोपचारं तत्सर्वं दत्त्वा क्षेत्रमवाप्नुयात् ॥

81. While this other man is engaged in cultivating the land, if the original lessee happen to return, he shall recover possession of the land after having paid the whole expense incurred in cultivating the waste land.—(Nārada, 11. 25 ; in *Vivādaratnākara*, p. 227.)

82. नारद 11. 26.] संवत्सरेणार्धखिलं खिलं स्याद् वत्सरैस्त्रिभिः ।
पञ्चवर्षावसन्नं तु क्षेत्रं स्यादटवीसमम् ॥

82. If a land is left uncultivated for one year, it is regarded as 'half-waste'; if for three years, it is 'waste'; if for five years, then it is as good as a 'forest.'—(Nārada, 11. 26 ; in *Vivādaratnākara*, p. 228.)

NOTES

'*Half-waste*,'—*i.e.*, slightly difficult of cultivation;—'*waste*'—difficult of cultivation;—'*as good as a forest*'—very difficult of cultivation.—(*Smṛtichandrikā*, p. 560.)

These definitions are of use in ascertaining the exact cost of cultivation payable under the preceding rule.

83. कात्यायन] अशक्तितो न दद्याच्चेत् खिलार्थे यः कृतो व्ययः ।
तदष्टभागहीनं तु कर्षकः कर्षमाप्नुयात् ।
वर्षाण्यष्टौ स भोक्ता स्यात् परतः स्वामिने तु तत् ॥

83. If the original holder is unable to pay the expenses incurred in the cultivation of the waste, the man who has cultivated it shall take the produce of the land, less by its eighth part (which shall be given to the original holder); it shall go on like this for eight years; after which the land reverts entirely to the original holder.—(Kātyāyana in *Vivādaratnākara*, p. 227 and *Smṛtichandrikā*, p. 560.)

84. नारद] तदष्टभागप्रचया यावत् सप्त गताः समाः ।
समाप्ते त्वष्टमे वर्षे भुक्तं क्षेत्रं लभेत सः ॥

84. In the above case, the deduction of the eighth part shall be made till seven years have elapsed; on the arrival of the eighth year, the original holder shall recover the land as his own.—(Nārada, 11. 25 ; in *Vivādaratnākara*, p. 227.)

NOTES

The preceding rule makes the land recoverable *after eight years*, while the present rule makes it recoverable after only *seven* years ; this apparent inconsistency has been sought to be reconciled by the remark that the land shall be recovered after *seven* years, if the breaking of it has not cost much labour to the man who has been cultivating it; but after eight years, if the labour of breaking has been great.—(*Vivādaratnākara*, p. 227.)

A man who has broken and brought into cultivation a plot of waste land shall enjoy the field for five years, and after that he may make it over to the owner on receiving the cost incurred by him in making the land productive.—(*Arthashāstra*, 3. 10.)

85. नारद 11. 27.] क्षेत्रं त्रिपुरुषं यस्य गृहं वा स्यात् क्रमागतम् ।
राजप्रसादादन्यत्र न तद्भोगः परान्नयेत् ॥

85. A field which has been held by three generations in succession, or an ancestral homestead cannot be handed over to other persons, except when it may be through the favour of the king.—(Nārada, 11. 27.)

NOTES FROM ARTHASHĀSTRA

(*a*) Disputes regarding the boundary between two villages shall be determined,—on the basis of dams, trees and other artificial marks,—by the nearest neighbours, or by the inhabitants of five or ten neighbouring villages;—in the absence of these, by old cultivators, cowherds, and the former owners (of the villages); inhabitants of the place, conversant with the exact boundary, shall indicate the exact position of the boundary.—If boundary-marks corroborative of such testimony are not found, those who indicated it shall be fined 1000 *Paṇas*.—The same fine is to be inflicted on those persons who may be found, to have destroyed or removed the boundary-marks.—(*Arthashāstra*, 3. 9.)

(*b*) Disputes regarding fields shall be dealt with by old neighbours and co-villagers. If there is difference of opinion among them, either the matter will be decided by a majority of such persons as are honest and respected by the people;—or the disputed land shall be divided equally between the two parties. If the parties do not accept either of these decisions, then the king shall either confiscate the land in dispute, or shall divide it between the parties in accordance with their respective needs.—(*Arthashāstra*, 3. 9.)

(*c*) These same rules apply to the case of disputes relating to hermitages, pasture-lands, public roads, cremation-grounds, temple-lands, sacrificial grounds and sacred places.—(*Arthashāstra*, 3. 9.)

(*d*) If a man damages the crops in another man's fields, by making a water-reservoir or a water-way through them, he shall pay the value of the crops damaged. In the case of damages done to fields, gardens and boundary-dikes, the fine shall be double the amount of the damage.—(*Arthashāstra*, 3. 9.)

(*e*) When a dike has been set up by a man,—if he does not attend to it for five years, his ownership of it ceases,—except in times of distress.—(*Arthashāstra*, 3. 9.)

(*f*) If a man digs a new tank or erects a fresh dike, he should not be charged any rent for five years.—If he has repaired those broken up and abandoned, no rent shall be charged for four years.—If he cleans them of overgrowths, for three years.

(*g*) All the cultivators benefiting from these tanks and dikes shall help in keeping them in good repair. If they do not do it, they shall be fined double the amount required for the needed repairs.—(*Arthashāstra*, 3. 9.)

(*h*) If the landlord does not make over the land to the cultivator at the time of sowing,—or if the cultivator does not cultivate the land at the proper time,—each of these shall be fined 12 *Paṇas*; except in cases where the failure has been due to calamity or disease.—(*Arthashāstra*, 3. 10.)

(*i*) Paying tenants may sell or mortgage their holdings to paying tenants;—freeholders, to freeholders.—If they sell or mortgage otherwise, they should suffer the first amercement;—the same penalty is to be inflicted upon a paying tenant.—If a paying tenant acquires a village of paying tenants, he becomes the master of all things there, with the exception of the dwelling-house of the former owner.—(*Arthashāstra* 3. 10.)

(*j*) If an owner of rent-free lands happens to be an inhabitant of another village, he shall receive only the produce of the land [not any cash income accruing thereform, which shall go to the king].—(*Arthashāstra*, 3. 10.)

(*k*) Whenever the villege-lord happen to go out on a journey, on some business on behalf of the village, the inhabitants of the village shall accompany him by turns. Anyone who fails to do this shall pay at the rate of 1½ *Paṇa* for every 8 miles of the journey undertaken.—(*Arthashāstra*, 3. 10.)

(*l*) If the village-lord ejects from the village any one who is not a thief or an adulterer, he shall be fined 24 *Paṇas*. If the entire village-community has ejected the man, then the entire community shall be fined 1000 *Paṇas*.—(*Arthashāstra*, 3. 10.)

RULES REGARDING HOUSE-BUILDING, ETC.

(*m*) Disputes relating to houses, fields, gardens, boundaries, tanks and water-reservoirs are to be settled with the help of neighbours.— (*Arthashāstra*, 3. 8.)

(*n*) Boundaries shall be marked by means of iron-pegs at the extremities joined together by means of metal-wires; and every house erected shall be built within the limits thus marked —(*Arthashāstra*, 3. 8.)

(*o*) When a new house is going to be built, a mound shall be set up 2 cubits or 3 steps away from the wall of another man's house.

(*p*) Rubbish-heaps, water-drains or wells shall not be set up in close proximity to another man's house. One who transgresses this rule should be fined 250 *Paṇas*.—(*Arthashāstra*, 3. 8.)

(*q*) The drain shall be dug deep on one's own land, at least a cubit and a half away from another man's wall. Transgression of this should be punished with a fine of 54 *Paṇas*.—(*Arthashāstra*, 3. 8.)

(*r*) The place for tying goats and bullocks, and elephants, the fire-place, the place for a water-reservoir, lighting-place, and threshing place,—these shall be set up at least a step or a cubit removed from another man's wall. Transgression should be punished with a fine of 24 *Paṇas*.—(*Arthashāstra*, 3. 8.)

(*s*) Openings and windows shall be arranged amicably among the neighbours, to suit each other's convenience.—(*Arthashāstra*, 3. 8.)

(*t*) If a man sets up such openings and windows in his house as are inconvenient to the neighbours,—he shall be fined 250 *Paṇas* ; except when the windows open out on a public lane or thoroughfare.—(*Arthashāstra*, 3. 8.)

(*u*) If a man causes inconvenience to the public by his pits, stairs, drains, rubbish-heaps and so forth,—he shall be fined 250 *Paṇas*.—(*Arthashāstra*, 3. 8.)

(*v*) If a man damages another man's wall by his drains, he shall be fined 12 *Paṇas* ; 24 *Paṇas* if he does it by committing nuisance.—(*Arthashāstra*, 3. 8.)

(*w*) If a man neglects to let out rain-water by means of a drain, he shall be fined 12 *Paṇas*.—(*Arthashāstra*, 3. 8.)

(*x*) If a tenant persists in occupying a house, after he has been told to vacate, on the expiry of the lease, he shall be fined 12 *Paṇas*.— (*Arthashāstra*, 3. 8.)

(*y*) If a tenant leaves the house before theo expiry f the lease, he shall pay rent for a year.—(*Arthashāstra*, 3. 8.)

(*z*) If a house is the common property of several persons,—if anyone of them renders no help in the maintaining of the house, he shall be fined 12 *Paṇas*;—so also one who does not permit the house to be used by his co-partners.—If any partner demolishes the house, he shall be fined 24 *Paṇas*.—(*Arthashāstra*, 3. 8.)

(*a* 1) When an immovable property is for sale, the first refusal lies with the owner's collaterals, then with his neighbours, then with his creditors; others come in only failing these.—(*Arthashāstra*, 3. 9.)

(*a* 2) The sale shall be publicly notified in front of the property for sale, the exact boundaries and title also being indicated.—When an intended purchaser has made a bid, it shall be thrice repeated in the words—'Who is buying the property at such and such a price?'—and if no one comes forward to out-bid the bidder, he will acquire the property; in the event of there being a competition among bidders, any amount that may be bid beyond the fair price of the property shall be paid into the king's treasury; the out-bidder shall also pay the court-fee.—If the property is sold to a person other than the highest bidder, the seller shall be fined 200 *Paṇas*.—The seller shall wait for the highest bidder to come and carry out the formalities of the sale,—for seven days; after that the property may be sold to another person.—(*Arthashāstra*, 3. 9.)

(*a* 3) If a man obstructs a minor path for men and cattle, he shall be fined 12 *Paṇas*;—if a major path, 24 *Paṇas*;—if a large road fit for the passing of elephants and other large animals, 50 *Paṇas*;—if a dike or a path to the forest, 600 *Paṇas*;—if a path to the cremation-ground, or the village-path, 200 *Paṇas*;—if the path to the public pasture-land, 1000 *Paṇas*;—if a man encroaches upon and thereby shortens those paths, his fine shall be the fourth part of that prescribed for obstructing it.—If he cultivates the whole of the path, then his fine shall be the same as that for obstructing it.—(*Arthashāstra*, 3. 10.)

CHAPTER XV

PRELIMINARY NOTE

SĀHASA

There is some confusion in the use of this term *'sāhasa.'* From the definitions given of *'sāhasa,'* it is clear that in its exact sense it stands for 'acts of violence,' and should include all 'crimes'; so that Defamation and Assault, Theft and Robbery, and Adultery and Murder should all come under *'sāhasa.'* Kane (p. 407) has rightly remarked that " *'sāhasa'* comprehends many offences in all of which the use of force or threat of the use of force is an essential element."—*'Sāhasa'* has been thus defined—(*a*) 'Whatever act is performed by force by persons inflamed with the pride of strength, is called *'sāhasa'*: such as Man-slaughter, Robbery, Indecent assault on another man's wife, Defamation and Assault.'—(Nārada, 14. 1-2.)—(*b*) 'If an act is committed with violence, and in the presence of men, it is *'sāhasa,'*—(Manu 8. 332) ;—on this latter *Medhātithi* remarks—' Acts other than the taking away of other's property also, when done with violence, should come under *'sāhasa'* ;—and yet our law-books have a chapter dealing with *'sāhasa'* apart from those dealing with Defamation, Assault, Theft and Adultery; and in this chapter they have dealt with all crimes, with the exception of those treated of separately.—There is however yet another confusion : under 'Theft' also the books deal with *'sāhasa'* as a form of 'Theft' the distinction being clearly explained by Manu (8. 332).—If an act is committed with violence and in the presence of men, it is called *'sāhasa,'* robbery; it is *Theft* when done in the absence of men, and when it is denied after having been done' ; —also Yājñavalkya (2. 230)—"When a property belonging to others is taken away by force, it is *'sāhasa.'*" *Vivādaratnākara* (p. 256) points out that 'Theft' consists in the taking away of another's property; and it is of two kinds—(*a*) what is committed behind the back of the owner and guards of the property, *i.e.*, *theft-proper*, and (*b*) what is committed in the presence of the owner,

by force or by deceit. So also *Parāsharamādhava* (p. 298). We are adopting the method of the Digest-writers, and are going to devote distinct chapters to (1) Defamation, (2) Assault, (3) Theft (under its two forms of *open theft*, swindling and *hidden theft*), (4) Adultery and (5) other 'crimes' in general.

Nārada (14. 2) has classified '*sāhasa*,' 'crime,' under five heads—(1) Man-slaughter, (2) Robbery and theft, (3) Adultery, (4) Defamation and Abuse and (5) Hurt. In regard to 'Man-slaughter,' it is added (14. 6)—Taking human lives through poison, weapons or other means [Adultery] and whatever other offences encompassing life may be imagined,—is called "Crime" of the highest degree.'

ABUSE AND DEFAMATION

DEFINITION

1. नारद 15. 1.] देशजातिकुलादीनामाक्रोशन्यङ्गसंज्ञितम् ।
यद्वचः प्रतिकूलार्थं वाक्पारुष्यं तदुच्यते ॥

1. An offensive statement, couched in foul and violent language, in regard to the native country, caste, family, and so forth of another person, is called 'Abuse.'—(Nārada, 15. 1; in *Vivādaratnākara*, p. 242.)

NOTES

'*Native country, etc.*'—(*a*) The defaming of one's native country:—'The inhabitants of the Gauda country are very quarrelsome';—(*b*) of caste:—'Brāhmaṇas are very greedy';—(*c*) of family:—'The descendants of Vishvāmitra are very cruel'; 'intelligence,' 'learning,' art and such other things also form objects of defamation.—(*Vivādaratnākara*, p. 242 and *Mitākṣarā*.)

2. नारद 15. 2.] निष्ठुराश्लीलतीव्रत्वात् तदपि त्रिविधं स्मृतम् ॥
साक्षेपं निष्ठुरं ज्ञेयमश्लीलं न्यङ्गसंज्ञितम् ।
तपनीयैरुपक्रोशैस्तीव्रमाहुर्मनीषिणः ॥

2. Abuse is of three kinds:—(*a*) '*Harsh*,' (*b*) '*Vulgar*,' and (*c*) '*Virulent*.' (*a*) The 'harsh' abuse is that accompanied by reproach; (*b*) the 'vulgar' is that which is couched in indecent words; and (*c*) the 'virulent' is that which charges a man with acts which would make him an outcast.—(Nārada, 15. 2; in *Vivādaratnākara*, pp. 242-243.)

NOTES

'*Harsh*'—'What a rascal that man is!'—'*Vulgar*' abuse consists in the use of indecent language towards one's female relatives.—'*Virulent*' 'That Brāhmaṇa drinks wine.'

3. कात्यायन] यस्त्वसत्संज्ञितैरङ्गैः परमाक्षिपति क्वचित् ।
अभूतैरथ भूतैर्वा निष्ठुरा वाक्स्मृता तु सा ॥
न्यङ्गावगूरणं वाचा क्रोधात्तु कुरुते यदा ।
वृत्तदेशकुलानां च अश्लीला सा बुधैः स्मृता ॥
महापातकयोक्त्री च रागद्वेषकरी च या ।
जातिभ्रंशकरी या च तीव्रा सा प्रथिता तु वाक् ॥

3. (*a*) When a man, in foul language, casts an aspersion upon another man, rightly or wrongly, it is called 'Harsh Abuse.'—(*b*) When he violently casts an aspersion upon another's character, native country or family,—by showing a vulgar part of his body—it is called 'Vulgar Abuse.'—(*c*) When the words used accuse the other man of a mortal offence and are calculated to arouse feelings of love and hate that might lead to the man being outcasted, it is 'Virulent Abuse.'—(Kātyāyana in *Vivādaratnākara*, p. 243.)

NOTES

Abuse (or Defamation) is of three kinds:—Harsh, Vulgar and Virulent.—(*Arthashāstra*, 3. 18.)

4. बृहस्पति 20. 2-4.] देशग्रामकुलादीनां क्षेपः पापनियोजनम् ।
द्रव्यं विना तु प्रथमं वाक्पारुष्यं तदुच्यते ॥
भगनीमातृसम्बन्धमुपपातकशंसनम् ।
पारुष्यं मध्यमं प्रोक्तं वाचिकं शास्त्रवेदिभिः ॥
अभक्ष्यापेयप्रथनं महापातकदूषणम् ।
पारुष्यमुत्तमं प्रोक्तं तीव्रम्मर्माभिघट्टनम् ॥

4. When offensive language is used against, or in defamation of, a man's native country, village or family,—without reference to any particular fact,—it is 'Abuse' of the first kind. When one makes a vulgar reference to another's mother or sister, or charges the man himself with a minor offence, it is the second kind of 'Abuse.'—When one charges another

with having taken forbidden food or drink, or taxes him with a heinous offence, or maliciously exposes his vulnerable (weak) points, it is 'Abuse' of the third or worst kind.—(Bṛhaspati, 20. 2—4 ; in *Vivādaratnākara*, pp. 243-244.)

NOTES

'*Without reference, etc.*'—*i.e.*, vaguely. According to *Vivādachintāmaṇi* (p. 109), the phrase means 'falsely'; it adds that this qualifies all the three kinds of 'abuse.'

5. मनु (?)] हूङ्कारं काशनं चैव लोके यच्च विगर्हितम् ।
अनुकुर्यादनुब्रूयाद् वाक्पारुष्यं तदुच्यते ॥

5. When one either mimics the speech or gestures of another man, or uses words which are considered objectionable by people, it is called 'Abuse.'—(Attributed to Manu, in *Vivādaratnākara*, p. 242.)

6. नारद] उद्दिश्यात्मानमन्यं वा क्षिपेद् यस्तु निरूप्य च ।
आक्रोष्टैव स मन्तव्यः ॥

6. When a man maliciously reviles another,—either with reference to himself or to another person,—he is to be regarded as having 'abused' him.—(Nārada in *Vivādaratnākara*, p. 244.)

7. कात्यायन] योऽगुणान् कीर्तयेद् द्वेषात् निर्गुणे वा गुणज्ञताम् ।
अन्यसंज्ञानियोजी च वाकदुष्टं तं नरं विदुः ॥

7. When a man, through malice, exposes the disqualifications of another, or attributes to him qualities that are not present, or applies to him an objectionable name,—he should be regarded as having 'defamed' him.—(Kātyāyana in *Vivādaratnākara*, p. 244.)

8. कात्यायन] अदुष्टस्यैव यो दोषान् कीर्तयेद् द्वेषकारणात् ।
अन्यापदेशवादी च वाग्दुष्टं तं नरं विदुः ॥

8. If a man, through malice, attributes to a person such defects as are not present in him, or such as are really present in another person,—this also is 'Defamation.'—(Kātyāyana in *Vivādaratnākara*, p. 245.)

9. नारद] पतितं पतितेत्युक्त्वा चोरं चोरेति वा पुनः ।
वचनात् तुल्यदोषः स्यात्, मिथ्या द्विर्दोषतां व्रजेत् ॥

9. If a man calls an outcast an 'outcast,' or a thief, a 'thief,'—this would be an offence; if it is untrue, the gravity of the offence is doubled.—(Nārada in *Smṛtichandrikā*, p. 760.)

NOTES

'Abusing' means *speaking harshly*. In most cases, it takes the following forms: (*a*) addressing offensively foul words, (*b*) cursing without reason, (*c*) giving false and disagreeable information, (*d*) defamation, attributing serious and non-serious offences.—(*Medhātithi.*)

PENALTIES

10. बृहस्पति 20. 5.] समानयोः समो दण्डो न्यूनस्य द्विगुणस्तु सः ।
उत्तमस्यार्धिकः प्रोक्तो वाक्पारुष्ये परस्परम् ॥

10. When two persons abuse each other, their punishment shall be equal if they are equals in status; if one is inferior to the other, the punishment of the inferior shall be double, and that of the superior, only half.—(Bṛhaspati, 20. 5; *Vivādaratnākara*, p. 245.)

11. याज्ञवल्क्य 2. 206.] अर्धोऽधमेषु, द्विगुणः परस्त्रीषूत्तमेषु च ।
दण्डप्रणयनं कार्यं वर्णजात्युत्तराधरैः ॥

11. For abusing an inferior person, the superior person shall be fined half (the amount prescribed for abuse in general); if one abuses ladies of other families or persons superior to himself, he shall be fined double. Punishment shall be inflicted after due consideration of the superiority and inferiority of the caste or sub-caste of the parties concerned.—(Yājña. 2. 206.)

NOTES

The 'superiority' and 'inferiority' here meant is that in regard to character and other qualities (not caste)—(*Mitākṣarā*) '*Half*,' '*double*,'—*i.e.*, of the 12½ *Paṇas* that have been prescribed in Yājña. 2.204; so that when a superior person abuses an inferior person, he shall be fined 6¼ *Paṇas*; for abusing a superior person, the inferior shall be fined 50 *Paṇas*.—(*Aparārka*.)

'*Caste and sub-caste*.'—The term 'sub-caste' stands for the 'mixed castes,' *Ambaṣṭha* and the rest.

12. याज्ञवल्क्य 2. 207.] प्रतिलोम्यापवादेषु द्विगुणा त्रिगुणा दमाः ।
वर्णानामानुलोम्येन तस्मादर्धार्धहानितः ॥

12. When there is abuse in the 'inverse order,'—*i.e.*, a person belonging to the lower caste abusing another belonging to a higher caste,—the fine shall be double and treble;—when it is in the 'usual order'—a person belonging to the higher caste abusing another belonging to a lower caste,—the fine in each case shall be less by half (than that laid down in the inverse case).—(Yājña. 2. 207.)

NOTES

(*a*) When a man abuses a person of the next higher caste—the Kṣattriya abusing a Brāhmaṇa, for instance,—the fine shall be '*double*' the amount (50 *Paṇas*) mentioned in the previous rule, *i.e.*, 100 *Paṇas*;—(*b*) if the abused person is one more step higher, *i.e.*, if the Vaishya has abused a Brāhmaṇa, his fine shall be '*treble*,'—*i.e.*, 150 *Paṇas*;—(*c*) if a man of the higher caste has abused one belonging to the next lower caste, his fine shall be '*half*' of 100, *i.e.*, 50 *Paṇas*; (*d*) if the Brāhmaṇa has abused a Vaishya, his fine shall be 25; for abusing a Shūdra, 12½ *Paṇas*, and so on.—(*Aparārka*.)

13. याज्ञवल्क्य 2. 204.] सत्यासत्यान्यथा स्तोत्रैर्न्यूनाङ्गेन्द्रियरोगिणाम् ।
क्षेपं करोति चेद् दण्ड्यः पणानर्धत्रयोदश ॥

13. If a man reviles such persons as are maimed, deficient in organs or afflicted by disease,—either truly or falsely or derisively, he shall be fined 12½ *Paṇas*.—(Yājña. 2. 204.)

NOTES

This refers to cases where both parties are of equal status.—(*Parāshara-mādhava*, p. 295.)

'*Truly*'—calling a really blind man 'blind';—'*falsely*'—calling a man blind when he is not blind;—'*derisively*'—calling an armless man as 'one with powerful arms.'—(*Aparārka.*)

When a man truly reviles another in reference to the latter's real defects of body, character, learning, and livelihood,—or in regard to his being one-eyed or lame,—the fine is 3 *Paṇas.*—If he speaks ironically of the 'excellent eyes' of a man who is really one-eyed, the fine should be 12 *Paṇas.*—These are penalties for abusing equals. For similar offence against superiors, the fines would be doubled, and halved for offences against inferiors; double, for offences against other's wives.—If it has been due to ignorance or carelessness the fine shall be half.—(*Arthashāstra*, 3.18.)

14. बृहस्पति 20. 6.] समजातिगुणानां च वाक्पारुष्ये परस्परम् ।
विनयोऽभिहितः शास्त्रे पणानर्धत्रयोदश ॥

14. When persons of equal caste and qualifications abuse each other, they shall be fined 12½ *Paṇas.*—(Bṛhaspati, 20. 6; in *Vivādaratnākara*, p. 247.)

15. विष्णु 41. 35-36] समवर्णाक्रोशने द्वादशपणान् दण्ड्यः ।
हीनवर्णाक्रोशने षट् ॥

15. When a man abuses another of the same caste as himself, he shall be fined 12 *Paṇas*;—when he abuses one of a lower caste, 6 *Paṇas.*—(Viṣṇu, 5. 35-36; in *Vivādaratnākara*, p. 247.)

16. मनु 8. 274.] काणं वाऽप्यथवा खञ्जमन्यं वापि तथाविधम् ।
तथ्येनापि वदन् दाप्यो दण्डं कार्षापणावरम् ॥

16. If a man, even truly, calls another 'one-eyed,' or 'lame,' or something else like it,—he should be fined at least one *kārṣāpaṇa.*—(Manu, 8. 274.)

NOTES

This refers to cases where the reviler is a very wicked person.—(*Mitākṣarā*, 2. 204 and *Parāsharamādhava*, p. 295).—It refers to cases where the reviler is a very superior person, or where the reviler's intention is not so bad.—(*Aparārka*, p. 806.)

17. विष्णु 5. 27.] दण्ड्यः काणखञ्जादीनां तत्त्ववाद्यपि कार्षापणद्वयम् ॥

17. When a man, even truly, calls another 'one-eyed,' or 'lame' or something else like it,—he shall be fined two *kārsāpaṇas*.—(Viṣṇu, 5. 27; in *Vivādaratnākara*, p. 248.)

18. शङ्खलिखित] उत्तमवर्णाक्षेपे तत्प्रसादो दण्डस्त्रयो वा कार्षापणाः । शुक्रवाक्याभिधानेऽप्येवमेव । तथा सवर्णव्यतिक्रमे द्वादशकार्षापणाः । यथारूपविशिष्टाक्षेपे विशिष्टस्य चतुर्विंशतिः । अविशिष्टातिक्रमे च विशिष्टस्य ततोऽर्धम् ।

18. If one reviles a person of the highest caste, his punishment is that he should conciliate him and obtain his pardon; and that he should pay a fine of three *kārṣāpaṇas*; in other cases of abuse also, the fine shall be three *kārṣāpaṇas*.—For reviling a person of the same caste, the fine is twelve *paṇas*.—If a highly qualified person is abused by one possessing inferior qualifications, the latter is to be fined 24 *Paṇas*. Half of this is the fine to be paid when a man of superior qualifications reviles a less qualified man.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 248.)

NOTES

This refers to cases where the reviler is a person of poor means.—(*Aparārka*' p. 807.)

19. मनु 8. 269.] समवर्णे द्विजातीनां द्वादशैव व्यतिक्रमे ।
वादेष्ववचनीयेषु तदेव द्विगुणं भवेत् ॥

19. Among twice-born men, when there is an offence against an equal, the fine is twelve.—In the case of unutterable abuses, it shall be double.—(Manu, 8. 269.)

NOTES

No significance attaches to the mention of 'twice-born men'; the same rule applies to all men.—The '*equality*' meant here may be on the point of caste, wealth, relations, age, deeds or learning. If the two men belong to the same caste, but one is wealthier than the other, the fine shall be double; if the abused person is superior also in the point of relation, it shall be treble; and if he is superior on all points, the fine shall be six times, *i.e.*, 72.—'*Unutterable*'—extremely

filthy.—'*Double*'—either of 12 mentioned in this rule, or of 100 mentioned in Manu, 8. 267 (next section); the latter is more reasonable.—(*Medhātithi.*)

20. मनु 8. 267.] शतं ब्राह्मणमाक्रुश्य क्षत्रियो दण्डमर्हति ।
वैश्योऽप्यर्धं शतं द्वे वा, शूद्रस्तु वधमर्हति ॥

20. For abusing a Brāhmaṇa, the Kṣattriya should be fined 100; the Vaishya, 150, or 200; the Shūdra deserves immolation.—(Manu, 8. 267.)

Notes

'*Immolation*'—Beating, cutting off the tongue,—even actual death—to be adjusted in accordance with the exact nature of the offence.—(*Medhātithi.*)

21. गौतम 12. 1, 4.] शूद्रो द्विजातीन् वाचाभिसन्धायांगमोच्यो येनोपहन्यात् ।

21. For reviling a twice-born person, the Shūdra shall have the offending limb (tongue) cut off.—(Gautama, 12. 1, 4; in *Vivādaratnākara*, p. 252.)

22. मनु 8. 268.] विप्रः पञ्चाशतं दण्ड्यः क्षत्रियस्याभिशंसने ।
वैश्यस्य त्वर्धपञ्चाशत् शूद्रे तु द्वादशो दमः ॥

22. For abusing a Kṣattriya, the Brāhmaṇa should be fined 50; for abusing a Vaishya, 25; and for abusing a Shūdra, 12.—(Manu, 8. 268.)

23. गौतम] ब्राह्मणराजन्ययोः क्षत्रियवैश्ययोः परस्पराक्रोशे क्षत्रियश्चे। द्वैश्यमाक्रोशेत् पञ्चाशतं दण्ड्यः । वैश्यः क्षत्रियं शतम् एवं क्षत्रियः शूद्रमाक्रोशेत् पञ्चविंशतिर्दण्ड्यः । वैश्यः पञ्चाशतम् ।

23. Whenever there is abusing between the Brāhmaṇa and the Kṣattriya, or between the Kṣattriya and the Vaishya,—where the Brāhmaṇa abuses the Kṣattriya, or the Kṣattriya abuses the Vaishya, he shall be fined 50; where the Vaishya abuses the Kṣattriya, the fine shall be 100; for abusing a Shūdra, the Kṣattriya shall be fined 25; and the

Vaishya, for abusing the Shūdra, shall be fined 50.'—(Gautama in *Medhātithi*, on 8. 268.)

24. हारीत] अनृताभिशंसने तदङ्गच्छेदनं पञ्चाशतं वा । आद्येषु पादो न वा ॥

24. If a man of the inferior caste falsely defames one of a superior caste, he shall have his tongue cut off, or fined 50. If the superior falsely defames the inferior, he shall either be fined 12½, or not be punished at all.—(Hārīta in *Vivādaratnākara*, p. 253.)

25. हारीत] आद्यो वर्णानामुत्तमवर्णाक्षेपाभिभवेष्वष्टौ पुराणाः ॥

25. Men of inferior castes reviling men of superior castes shall be fined 8 *Puraṇas*.—(Hārīta in *Vivādaratnākara*, p. 251.)

NOTES

A '*Purāṇa*' is equal to 16 'silver-beans.'—(Manu, 8. 135-136.)

26. शङ्खलिखित] आक्रोशे ब्राह्मणः क्षत्रियस्य शतं दण्ड्यः । शतार्धं वैश्यस्य—पञ्चविंशतिं शूद्रस्य ॥

26. For abusing a Kṣattriya, the Brāhmaṇa shall be fined 100; 50, for abusing a Vaishya, and 25, for abusing a Shūdra.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 251.)

27. बृहस्पति 20. 7-11.] विप्रे शतार्धं दण्डस्तु क्षत्रियस्याभिशंसने ।
वैश्यस्य त्वर्धपञ्चाशत् शूद्रस्यार्धत्रयोदश ॥
सच्छूद्रस्यायमुदितो विनयोऽनपराधिनः ।
गुणहीनस्य पारुष्ये ब्राह्मणो नापराध्नुयात् ॥
वैश्यस्तु क्षत्रियाक्षेपे दण्डनीयः शतं भवेत् ।
तदर्धं क्षत्रियो वैश्यं क्षिपन् विनयमर्हति ॥
शूद्राक्षेपे क्षत्रियस्य पणविंशतिको दमः ।
वैश्यस्य चेत्स्याद् द्विगुणं शास्त्रविद्भिरुदाहृतम् ॥
वैश्यमाक्षारयञ्छूद्रो दाप्यः स्यात् प्रथमं दमम् ।
क्षत्रियं मध्यमं चैव विप्रमुत्तमसाहसम् ॥

27. For the Brāhmaṇa, abusing a Kṣattriya, the fine is 50 *Paṇas*; for abusing a Vaishya, 25; for abusing a Shūdra, 12½.—

This penalty has been prescribed for cases where the Shūdra abused is a virtuous one and has committed no wrong ; if he is a wicked person, no blame attaches to the Brāhmaṇa for abusing him.—For reviling a Kṣattriya, the Vaishya shall be fined 100 ; the Kṣattriya, reviling a Vaishya shall pay 50. A Kṣattriya reviling a Shūdra shall pay 20 *Paṇas* ; for the same, the Vaishya shall pay 40.—For abusing a Vaishya, the Shūdra shall pay the first amercement (250 *Paṇas*) ; the middle amercement (500 *Paṇas*) for abusing a Kṣattriya ; and the highest amercement (1000 *Paṇas*) for abusing a Brāhmaṇa.—(Bṛhaspati, 20. 28-11 : in *Vivādaratnākara*, pp. 251-252.)

28. मनु 8. 276-277.] ब्राह्मणक्षत्रियाभ्यां तु...ब्राह्मणे साहसः पूर्वः
क्षत्रिये त्वेव मध्यमः । विट्शूद्रयोरेवमेव ।

28. In the case of mutual abuse between a Brāhmaṇa and a Kṣattriya, the Brāhmaṇa shall be fined 250 and the Kṣattriya 500 ; similarly between the Vaishya and the Shūdra.—(Manu, 8. 276-277.)

NOTES

This refers to cases where some grievous offence has been attributed.—(Medhātithi.)

29. मनु 8. 270—272.] एकजातिर्द्विजातींस्तु वाचा दारुणया क्षिपन् ।
जिह्वायाः प्राप्नुयाच्छेदं ... ॥
नामजातिग्रहं त्वेषामभिद्रोहेण कुर्वतः ।
निक्षेप्योऽयोमयः शङ्कुर्ज्वलन्नास्ये दशाङ्गुलः ॥
धर्मोपदेशं दर्पेण विप्राणामस्य कुर्वतः ।
तप्तमासेचयेत्तैलं वक्त्रे श्रोत्रे च पार्थिवः ॥

29. If a Shūdra insults a twice-born person with gross abuse, he should have his tongue cut off.—If he mentions his name or caste with scorn, a burning iron-nail ten inches long shall be thrust into his mouth.—If, through arrogance, he teaches Brāhmaṇas their duty, the king shall have heated oil poured into his mouth and ears.—(Manu, 8. 270—272 ; also Viṣṇu, 5. 24-25.)

NOTES

'Burning iron-nail, etc.'—This refers to repeated offence—says *Aparārka* (p. 809).

30. मनु 8. 273.] श्रुतं देशं च जातिं च कर्म शारीरमेव च ।
वितथेन ब्रुवन् दर्पाद् दाप्यः स्याद् द्विशतं दमम् ॥

30. If a man misrepresents the learning, habitat, caste, occupation (religious austerities) or bodily defects of another person, he should be made to pay a fine of 200.—(Manu, 8. 273.)

31. विष्णु 5. 26.] श्रुतदेशजातिकर्मणामन्यथावादी कार्षापणद्वयं दण्ड्यः ।

31. If a man falsely denies the sacred knowledge, habitat or caste,—or says that he has not fulfilled his religious duties, [or that his sacramental rites have not been performed]—he shall be fined two *Paṇas*—(Viṣṇu, 5. 26 ; in *Vivādaratnākara*, p. 255.)

32. याज्ञवल्क्य 2. 205.] अभिगन्ताऽस्मि भगिनीं मातरं वा तवेति हि ।
शपन्तं दापयेद्राजा पञ्चविंशतिकं दमम् ॥

32. 'I shall approach your mother, or sister,'—if one abuses another with such words,—the king shall make him pay a fine of 25.—(Yājña. 2. 205.)

33. विष्णु 5. 33-34.] मातृयुक्ते तूत्तमम् ।

33. For insulting a man by using abusive words regarding his mother, the fine is the highest amercement (1000 *Paṇas*).—(Viṣṇu, 5. 33-34, in *Vivādaratnākara*, p. 252.)

34. याज्ञवल्क्य 2. 208-209.] बाहुग्रीवानेत्रसक्थिविनाशे वाचिके दमः ।
शत्यः, ततोऽर्धकः पादनासाकर्णकरादिषु ॥
अशक्तस्तु वदन्नेवं दण्डनीयः पणान्दश ।
तथा शक्तः प्रतिभुवं दाप्यः क्षेमाय तस्य तु ॥

34. If a man threatens another with the cutting off of his arms, neck, eyes, or loins,—he should be fined 100 ; half of that if he threatens him with the cutting of the feet, the nose or the ear.—If such a threat is uttered by a person who is unable to inflict the threatened injury, he should be fined 10 *Paṇas* and be made to guarantee, with adequate security, the safety of the threatened man.—(Yājña. 2. 208-209.)

35. विष्णु] व्यङ्गताक्षेपे उक्ते कार्षापणशतम् ।

35. If one insults a man with reference to a bodily deformity, he should be fined 100 *kārṣāpaṇas.*—(Viṣṇu in *Vivādaratnākara*, p. 250.)

36. मनु 8.275.] मातरं पितरं जायां भ्रातरं तनयं गुरुम् ।
आक्षारयञ्छतं दाप्यः पन्थानं चाददद् गुरोः ॥

36. If, by false insinuations, a man alienates another from his mother, father, wife, brother, child, or preceptor, he should be fined 100; as also one who does not give way to his superior.—(Manu, 8. 275.)

NOTES

'*Alienates.*'—This rendering of the text is according to Medhātithi. *Vivādaratnākara* (p. 250), *Mitākṣarā* (p. 204), *Parāsharamādhava* (p. 295) and *Mayūkha* (p. 228) take the worse to mean as follows :—'*If a man chides his own mother, father, brother, child or preceptor [when these have committed some wrong], or his wife [when she has committed no wrong], he shall be fined 100.*'

37. शङ्खलिखित] (क्रोशतः) तथाधिकृतान् गुरून् विप्रांश्च निर्भर्त्सनं ताडनं
गोमयानुलेपनं खरारोहणम्, दर्पहरो दण्डो वा ॥

37. If a man chides his superior officers, or elders or Brāhmaṇas.—he shall be reprimanded, beaten, have cowdung smeared over his body and made to ride on an ass; or some such punishment shall be inflicted as would cure him of his arrogance.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 250.)

38. विष्णु 5. 8.] गुरूनाक्षारयन् कार्षापणशतं (दण्ड्यः) ।

38. For insulting his elders, a man shall be fined 100 *kārṣāpaṇas.*—(Viṣṇu, 5. 28; in *Vivādaratnākara*, p.250.)

39. बृहस्पति 20.13.] क्षिपन् स्वस्रादिकं दद्यात् पञ्चाशत्पणिकं दमम् ।

39. A man reviling a sister or other relations shall pay a fine of 50 *Paṇas.*—(Bṛhaspati, 20. 13, in *Vivādaratnākara*, p. 250.)

40. बृहस्पति 20. 12.] धर्मोपदेशकर्ता च वेदोहरणान्वितः (शूद्रः) ।
आक्रोशकश्चविप्राणां जिह्वाच्छेदेन दण्ड्यते ॥

40. A Shūdra teaching the precepts of religion, on uttering the words of the Veda, or reviling a Brāhmaṇa, shall be punished by cutting out his tongue.—(Bṛhaspati, 20. 12; in *Vivādaratnākara*, p. 252.)

41. आपस्तम्ब 2. 10. 27-14.] जिह्वाच्छेदं शूद्रस्यातिधार्मिकमाक्रोशतः ।

41. A Shūdra reviling a highly religious person should have his tongue cut out.—(Āpastamba, 2. 10. 27. 14; in *Vivādaratnākara*, p. 253.)

42. याज्ञवल्क्य 2. 211.] त्रैविद्यनृपदेवानां क्षेप उत्तमसाहसः ।
मध्यमो जातिपूगानां प्रथमो ग्रामदेशयोः ॥

42. For reviling a Brāhmaṇa learned in the three Vedas, or a king, or elderly persons—the fine is 1000; 500 for reviling the caste-assemblies; and 250 for reviling a village or a country.—(Yājña. 2, 211; also Viṣṇu, 5. 31-32.)

43. बृहस्पति 20. 14.] देशादिकं क्षिपन्दाप्यः पणानर्धत्रयोदशान् ।
पापेन योजयन् दर्पात् दाप्यः प्रथमसाहसम् ॥

43. For reviling a man's native country or other things, one shall be fined 12½ *Paṇas*; for arrogantly imputing to him an offence, 250 *Paṇas*.—(Bṛhaspati, 20. 14; in *Aparārka*, p. 810.)

44. याज्ञवल्क्य 2. 301.] राज्ञोऽनिष्टप्रवक्तारं तस्यैवाक्रोशकारिणम् ।
तन्मन्त्रस्य च भेत्तारं छित्वा जिह्वां प्रवासयेत् ॥

44. A man who says what is disagreeable to the king, and he who defames him, and he who divulges his secrets, shall be banished after having his tongue cut out.—(Yājña. 2. 301.)

45. याज्ञवल्क्य 2. 210.] पतनीयकृते क्षेपे दण्डो मध्यमसाहसः ।
उपपातकयुक्ते तु दाप्यः प्रथमसाहसम् ॥

45. If a man defames another by attributing to him an offence that would make him an outcast, he shall be fined

the middle amercement (500). If he attributes to him a minor offence, the fine shall consist of the first amercement (250).—(Yājña. 2.210.)

NOTES

'*An offence that, etc.*'—Such as the killing of a Brāhmaṇa.

46. व्यास] पापोपपापवक्तारो महापातकशंसकाः ।
आद्यमध्योत्तमान् दण्डान् दद्युस्त्वेते यथाक्रमम् ॥

46. For defaming a man by attributing to him some vague slight offence, one should be fined 250 ; by attributing a definite 'minor' offence, 500 ; by attributing a 'heinous' offence, 1000.—(Vyāsa in *Vivādaratnākara*, p. 256.)

47. विष्णु 5. 29-30.] परस्य पतनीये क्षेपे कृते उत्तमसाहसम् उपपातकयुक्ते मध्यमम् ।

47. One shall pay a fine of 1000 for defaming a man by imputing to him a 'heinous' crime entailing loss of caste ; —a fine of 500 for imputing a 'minor' offence.—(Viṣṇu, 5. 29-30 ; in *Vivādaratnākara*, p. 256.)

48. याज्ञवल्क्य 2. 289.] शतं स्त्रीदूषणे दद्यात्, द्वे तु मिथ्याभिशंसिता ॥

48. For defaming a woman by proclaiming her real defects,—the fine is 100 ; if the defamation is untrue and attributes to her defects that do not exist, the fine is double. —(Yājña. 2. 289.)

NOTES

According to *Mitākṣarā*, this rule, from the context, should refer to the *maiden*, not to women in general.

49. नारद 15. 30.] अवक्रुश्य च राजानं कर्मणि स्वे व्यवस्थितम् ।
जिह्वाच्छेदाद्भवेच्छुद्धिः सर्वस्वग्रहणेन वा ॥

49. If a man reviles a king who is firm in the discharge of his duties, he becomes absolved from the sin by the cutting

out of his tongue, or by the confiscation of his entire property. – (Nārada, 15. 30; in *Vivādaratnākara*, p. 257.)

50. नारद] पतितं पतितेत्युक्त्वा चौरं चौरेति वा पुनः ।
वचनात् तुल्यदोषः स्यात् मिथ्या द्विर्द्दोषितां व्रजेत् ॥

50. One who calls an outcast an 'outcast,' or a thief a 'thief,' is as criminal as those whom he taxes without that offence; if he reproaches them without justification, he is twice as guilty as they are.—(Nārada, 15. 21; in *Vivādaratnākara*, pp. 257-258.)

51. कात्यायन] यत्र स्यात् परिहारार्थं पतितस्तेन कीर्तनम् ।
वचनात्तत्र न स्यात्तु दोषो यत्र विभावयेत् ॥

51. If a man exposes an outcast or a thief with a view to avoid association with them, he commits no offence, if he can prove it so.—(Kātyāyana in *Vivādaratnākara*, p. 258.)

52. कात्यायन] महता प्रणिधानेन वाग्दुष्टं साधयेन्नरम् ।
अनृताख्यानशीलानां जिह्वाच्छेदो विशोधनम् ॥

52. The king shall carefully investigate all cases of defamation; those who are found to be addicted to the habit of falsely defaming others should have their tongue cut out.—(Kātyāyana in *Vivādaratnākara*, p. 258.)

53. हारीत] मिथ्यादूषिणां जिह्वां छिन्द्यात् दण्डयेद्वा सहस्रम् ॥

53. Those who defame others falsely should have their tongue cut out,—or they should be fined a thousand.—(Hārīta in *Vivādaratnākara*, p. 258.)

54. कात्यायन–उशनस्] मोहात् प्रमादात् संहर्षात् प्रीत्या वोक्तं मयेति यः ।
नाहमेवं पुनर्वक्ष्ये दण्डार्धं तस्य कल्पयेत् ॥

54. If the reviler offers an apology saying—'What I said was in ignorance, or through carelessness, or in an exuberance of joy, or of love; and I shall never say it again,'—he shall pay only half the prescribed fine.—(Kātyāyana and Ushanas in *Vivādaratnākara*, p. 246.)

NOTES FROM ARTHASHASTRA.

(*a*) If the reviler urges extenuating circumstances—such as his incapacity, provocation, intoxication, or ignorance,—the fine shall be only 12 *Paṇas.*—(Arthashāstra, 3. 18.)

(*b*) If a man threatens another with the breaking of his legs, and so forth but does not actually do it,—his punishment shall be half of what it would have been if he had actually inflicted the injury.—(Arthashāstra 3. 18.)

CHAPTER XVI

ASSAULT AND HURT

DEFINITION

1. परिशिष्ट] दुःखं रक्तं व्रणं भङ्गं छेदनं भेदनं तथा ।
कुर्याद् यत् प्राणिनां तद्धि दण्डपारुष्यमुच्यते ॥

1. Causing pain, making blood flow, wounding, fracturing, cutting and piercing,—these are the forms of Assault or Hurt.—(*Parishiṣtakara* in *Smṛtichandrikā*, p. 761.)

2. बृहस्पति 21. 1.] हस्तपाषाणलगुडैर्भस्मकर्दमपांसुभिः ।
आयुधैश्च प्रहरणं दण्डपारुष्यमुच्यते ॥

2. Assault consists in striking with hands, stones, stick, ashes, mud, dust, or weapons.—(Bṛhaspati, 21. 1 ; in *Vivādaratnākāra*, p. 259.)

3. नारद 15. 4.] परगात्रेष्वभिद्रोहो हस्तपादायुधादिभिः ।
भस्मादिभिश्चावघातो दण्डपारुष्यमुच्यते ॥

3. Assault consists in hurting another's limbs with hands, feet, weapons, and such other things, and in annoying him with ashes and such other things.—(Nārada, 15. 4 ; in *Vivādaratnākara*, p. 260.)

NOTES

'*Another*'—stands for all kinds of living beings, moveable as well as immoveable, *i.e.*, men, animals, and trees.—(*Vivādaratnākara*, p. 260, *Parāsharamādhava*, p. 238, *Vīramitrodaya*, p. 470 and *Mitākṣarā*.)

'*Annoying*'—The word in the original is '*avaghāta*,' 'striking' ; but all the commentators explain it as 'causing mental worry and annoyance by throwing unclean things.'

4. नारद 15. 5.] तस्यापि दृष्टं त्रैविध्यं मृदुमध्योत्तमक्रमात् ।
अवगूरण-निःशङ्कपातन-क्षतदर्शनैः ॥

4. There are three kinds of Assault: (*a*) light, (*b*) middling, and (*c*) heavy—according as it consists in (*a*) threatening, (*b*) direct striking and (*c*) wounding.—(Nārada, 15. 5 ; in *Vivādaratnākara*, p. 260.)

NOTES

Assault is of three kinds: Touching, threatening to strike and actually striking.—(Arthashāstra, 3. 19.)

'*Threatening*'—Raising the hand or a weapon, as if to strike; this is 'light' assault.—'*Directly striking*'—striking with the hand or weapon, but without fetching blood; this is 'middling' assault.—'*Wounding*'—wounding to the extent of fetching blood; this is 'heavy' assault.—(*Vivādaratnākara*, p. 260.)

5. नारद 15. 6.] हीनमध्योत्तमानां च द्रव्याणां समतिक्रमात्।
त्रीण्येव साहसान्याहुः॥

5. Each of the said three kinds is again of three kinds, according as the weapon of assault is of the inferior or middling or superior kind.—(Nārada, 15. 6; in *Vivādaratnākara*, p. 260.)

6. व्यास] भस्मादिना प्रक्षिपणं ताडनं च करादिना।
आवेष्टनं चांशुकाद्यैर्दण्डपारुष्यमुच्यते॥

6. Assault consists of (*a*) throwing ashes and such things, (*b*) striking with the hand or some weapon, and (*c*) binding with a piece of cloth or some such thing.—(Vyāsa in *Smṛtichandrikā*, p. 761 and in *Vīramitrodaya*, p. 471.)

INVESTIGATION

7. बृहस्पति 21. 11-12.] विविक्ते ताडितो यस्तु हतिर्दृश्यो न वा भवेत्।
हन्ता तत्रानुमानेन विज्ञेयः शपथेन वा॥
अन्तर्वेश्मन्यरण्ये वा निशायां यत्र ताडितः।
शोणितं तत्र दृश्येत न पृच्छेत्तत्र साक्षिणः॥

7. When a man has been beaten in a solitary place (where there were no witnesses), or when there is no visible mark (on the body), the offender shall be found out either by circumstantial evidence or by ordeal.—Even though a man may have been beaten in the interior of a house, or in a forest, or at night,—if blood is visible, no witnesses need be examined.—(Bṛhaspati, 21. 11-12; in *Vivādaratnākara*, p. 273.)

NOTES.

'*Solitary place*,'—*i.e.*, where the man beaten could not see the striker, and where was no third party present.—'*Blood*'—which would be a sure indicator of the wound having been inflicted by some one.—(*Vivādaratnākara*, p. 273.)

8. नारद] कश्चित् कृत्वाऽऽत्मनश्चिह्नं द्वेषात् परमभिद्रवेत् ।
हेत्वर्थगतिसामर्थ्यैर्युक्तं तत्र परीक्षणम् ॥

8. When a man makes marks on his own body and accuses another person, through malice, of having caused the hurt, the case should be carefully examined with special reference to motive, circumstantial evidence and the capacity of the parties.—(Nārada in *Vivādaratnākara*, p. 273 and in *Aparārka*, p. 811.)

9. याज्ञवल्क्य 2. 212.] असाक्षिकहते चिह्नैर्युक्तिभिश्चागमेन च ।
द्रष्टव्यो व्यवहारस्तु कूटचिह्नकृताद् भयात् ॥

9. In cases of assault, where there are no witnesses, the case shall be investigated with special reference to the marks of hurt, the motive attributed, the rumours current in regard to the case (and also ordeals) ;—because there is always the suspicion of the marks being fraudulent.—(Yājña. 2.212.)

10. कात्यायन] हेत्वादिभिर्न पश्येच्चेद्दण्डपारुष्यकारणम् ।
तदाऽसाक्षिकृतं तत्र दिव्यं चापि नियोजयेत् ॥

10. In case no motive or reason leads to any conclusion regarding the hurt, the king shall, in the absence of witnesses, have recourse to ordeal.—(Kātyāyana in *Vivādaratnākara*, p. 274 and *Vivādachintāmaṇi*, p. 120.)

Penalty for Threatening Assault

11. बृहस्पति] भस्मादीनां प्रक्षिपणं ताडनं च करादिना ।
प्रथमं दण्डपारुष्यं दमः कार्योऽत्र माषिकः ॥
एष दण्डः समेषूक्तः, परस्त्रीष्वधिकेषु च ।
द्विगुणस्त्रिगुणो ज्ञेयः प्रधानापेक्षया बुधैः ॥

11. Throwing ashes, or striking with the hand, is an Assault of the first degree, for which the fine to be inflicted is one *Māṣha*, in a case where the parties concerned are of equal status ; if the assault has been made against another man's wife, the fine shall be double (*i.e.*, two *Māṣhas*) ; if against a person of superior status, it shall be three *Māṣhas*.—(Bṛhaspati in *Vivādachintāmaṇi*, p. 112.)

NOTES

'*Striking*'—here stands for *threatening to strike*.—(*Vivādachintāmaṇi*, p. 112.)

'*Equal status*'—of the same caste, possessing equal learning and equal in all other respects.

'*Māṣha*'—of *silver*—(*Aparārka*, p. 813 *and Vivādachintāmaṇi*, p. 112.)

12. याज्ञवल्क्य 2. 213-214.] भस्मपङ्करजःस्पर्शे दण्डो दशपणः स्मृतः ।
अमेध्यपार्ष्णिनिष्ठ्यूतस्पर्शने द्विगुणः स्मृतः ॥
समेष्वेव, परस्त्रीषु द्विगुणस्तूत्तमेषु च ।
हीनेष्वर्धदमो मोहमदादिभिरदण्डनम् ॥

12. Between persons of equal status, (*a*) for the throwing of ashes, mud or dust, the fine shall be 10 *Paṇas*; (*b*) for defiling with such unclean things as tears, phlegm, saliva and the like, or touching with the heel, the fine shall be 20 *Paṇas*.—If the person assaulted is another man's wife, the fine shall be double—*i.e.*—(*a*) 20, and (*b*) 40 *Paṇas* respectively; so also when the person assaulted is one of superior learning and character.—If the person assaulted is of inferior status, the fine shall be half.—If the insulting has been due to stupidity or intoxication, no punishment shall be inflicted.—(Yājña. 2. 213-214.)

13. कात्यायन] छर्दिमूत्रपुरीषाद्यैरधःसु च चतुर्गुणः ।
षड्गुणः कायमध्ये तु, मूर्ध्नि त्वष्टगुणः स्मृतः ॥

13. If a man touches another man on his lower limbs, with vomit, urine, excreta or such other unclean things,—he shall be fined 40 *Paṇas*; if on the middle of the body, 60 *Paṇas*; if, on the head, 80 *Paṇas*.—(Kātyāyana in *Vivādaratnākara*, p. 262 and *Vivādachintāmaṇi*, p. 112.)

NOTES

Both these rules 11 and 12 refer to cases where the two parties belong to the same caste.—(*Aparārka* and *Vivādachintāmaṇi*, p. 113.)

14. याज्ञवल्क्य 2. 217.] पादकेशांशुककराकर्षणेषु पणा दश ।
पीडाकर्षांशुकावेष्टपादाध्यासे शतं दमः ॥

14. For pulling one by his feet, hair, clothing or hands, the fine shall be 10 *Paṇas*; for trampling upon a man after having bound, pressed and dragged him,—the fine shall be a hundred.—(Yājña. 2. 217.)

15. कात्यायन] उद्‌गूरणे तु हस्तस्य कार्यो द्वादशको दमः ।
स एव द्विगुणः प्रोक्तः पातनेषु सजातिषु ॥

15. For raising one's hands against another, the fine shall be 12 *Paṇas* ;—for striking with the hand, the fine shall be 24 *Paṇas*. This when the two parties belong to the same caste.—(Kātyāyana in *Vivādaratnākara*, p. 262.)

16. बृहस्पति 12. 5.] उद्यतेऽश्मशिलाकाष्ठे कर्तव्यः प्रथमो दमः ।
परस्परं हस्तपादे दशविंशतिकस्तथा ॥

16. When a person raises gravel, stones, or pieces of wood at another, he shall be fined the first amercement ;—when they mutually strike one another with hands, each of them shall be fined 10 *Paṇas* ; if with feet, 20 *Paṇas*.—(Bṛhaspati, 21. 5; in *Vivādaratnākara*, p. 262.)

NOTES

This also refers to cases where the parties belong to the same caste.—(*Vivādaratnākara*, p. 263 and *Vivādachintāmaṇi*, p. 113.)

17. विष्णु 5. 60–64.] हस्तेनोद्‌गूरयित्वा दशकार्षापणान्–पादेन विंशतिः–
काष्ठेन प्रथमसाहसम्–प्रस्तरे मध्यमम्–शस्त्रेणोत्तमम् ।

17. If a man raises his hand against another (his equal in caste), he shall be fined 10 *Kārshāpaṇas* ;—if he raises his foot, 20 ;—if he raises a piece of wood, the first amercement ;—if he raises a stone, the second amercement ;—if he raises a weapon, the highest amercement ;—(Viṣṇu, 5. 60—64,) [Quoted in *Vivādaratnākara*, p. 263 ; *Vivādachintāmaṇi*, pp. 113-114.]

18. याज्ञवल्क्य 2. 216.] उद्‌गूर्णे हस्तपादे तु दशविंशतिकौ दमौ ।
परस्परस्य सर्वेषां शस्त्रे मध्यमसाहसम् ॥

18. If a man raises his hands against another, the fine shall be 10 *Paṇas* ;—if he raises his feet, 20 *Paṇas* ;—if he raises a weapon, it shall be the middle amercement. This is in the case of all castes.—(Yājña. 2. 216.)

NOTES

This refers to cases where the two parties belong to the same caste,—says *Vivādaratnākara* (p. 263).

19. शङ्खलिखित] प्रहारोद्यमे षट्पञ्चाशत् । निपातने तद्द्विगुणम् ॥

19. If a man attempts to strike another, he shall pay a fine of 56 ; if he actually strikes him, 112.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 263.)

NOTES

This refers to cases where the striker belongs to a higher caste than the person struck.—(*Vivādaratnākara*, p. 263.)

HURT

20. याज्ञवल्क्य 2. 218.] शोणितेन विना पीडां कुर्वन् काष्ठादिभिर्नरः ।
द्वात्रिंशतं पणान् दाप्यो, द्विगुणं दर्शनेऽसृजः ॥

20. If a man hurts another with a wooden stick or some such thing—without fetching blood he shall be fined 32 *Paṇas*; if he fetches blood, the fine shall be double.—(Yājña. 2. 218.)

NOTES

'*Another*'—a person of the same caste as himself.—(*Aparārka.*)

21. बृहस्पति 21. 6.] मध्यमः शस्त्रसन्धाने संयोज्यः क्रुद्धयोर्द्वयोः ।
कार्यः क्षतानुरूपस्तु लग्ने घाते दमो बुधैः ॥

21. When two persons, in anger, use weapons against one another, the middle amercement shall be inflicted upon both ; if a wound has been inflicted, the punishment shall be fixed by experts, in accordance with the severity of the hurt.—(Bṛhaspati, 21. 6; in *Vivādaratnākara*, p. 264.)

22. बृहस्पति 21. 7.] इष्टकोपलकाष्ठैश्च ताडने तु द्विमाषकः ।
द्विगुणः शोणितोद्भेदे दण्डः कार्यो मनीषिभिः ॥

22. For injuring a person with bricks, stones, or sticks, the fine shall be two *Māṣas* ; if blood flows, the fine shall be double.—(Bṛhaspati, 21. 7; in *Vivādaratnākara*, p. 264.)

23. विष्णु 5. 66-67.] दण्ड्यः शोणितेन विना दुःखमुत्पादयिता द्वात्रिंशतम्पणान् । सहशोणितेन चतुःषष्टिम् ॥

23. If a wound is inflicted without fetching blood, the fine shall be 32 *Paṇas*; 46 *Paṇas*, if he fetch blood.—(Viṣṇu, 5. 66-67; in *Vivādaratnākara*, p. 264.)

24. मनु 8. 284.] त्वग्भेदकः शतं दण्ड्यो लोहितस्य च दर्शकः ।
मांसभेत्ता च षण्णिष्कान् प्रवास्यस्त्वस्थिभेदकः ॥

24. One who bruises the skin should be fined 100; as also one who fetches blood; he who tears the flesh six *Niṣkas*; and the bone-breaker should be banished.—(Manu, 8. 284.)

NOTES

This pertains to offences committed among twice-born persons themselves as also between two *Shūdras*.—'Banishment' is an alternative to the 'death-penalty'; hence 'banishment' shall be the punishment for a Brāhmaṇa, while for others, it shall be 'death.'—(*Medhātithi.*)

'*A hundred*' is the fine for inflicting a bleeding wound larger than the one for which Viṣṇu (22 above) has laid down 64,—says *Vivādaratnākara*, p. 264.)

'*Niṣkas*'—one *Niṣka* being equal to four '*Suvarṇas*.' (*Vivādachintāmaṇi*, p. 115.)

25. बृहस्पति 21. 8-9.] त्वग्भेदे प्रथमो दण्डो मांसभेदे तु मध्यमः ।
उत्तमस्त्वस्थिभेदे तु घातने तु प्रमापणम् ॥
कर्णनासाकरच्छेदे दन्तभेदेऽङ्घ्रिभेदने ।
कर्तव्यो मध्यमो दण्डो द्विगुणः पतितेषु च ॥

25. For bruising the skin, the lowest amercement shall be inflicted; for tearing the flesh, the middle amercement; for breaking a bone, the highest amercement; for killing, capital punishment.—For breaking of the ear, the nose, or the hand, for injuring the teeth or the feet, the middle amercement shall be inflicted; double of this, when any of these limbs is entirely cut off.—(Bṛhaspati, 21. 8-9; in *Vivādaratnākara*, pp. 264-265.)

26. कात्यायन] कर्णौष्ठघ्राणनासाक्षिजिह्वाशिश्नकरस्य तु ।
छेदने चोत्तमो दण्डो भेदने मध्यमो भृगुः ॥

26. For cutting off the ear, the lip, the nose, the eyes, the tongue, the penis or the hand,—the punishment shall be

the highest amercement; the middle amercement if any of these limbs is only broken.—(Kātyāyana in *Vivādaratnākara*, p. 265.)

27. याज्ञवल्क्य 2. 219-220.] करपाददन्तभंगे छेदने कर्णनासयोः ।
मध्यो दण्डो ग्रन्थिभेदे मृतकल्पहते तथा ॥
चेष्टाभोजनवाग्रोधे नेत्रादिषु विभेदने ।
कन्धराबाहुसक्थ्नां च भङ्गे मध्यमसाहसः ॥

27. For breaking the hand, the feet or the teeth,—and for tearing the ear or the nose,—the punishment is the middle amercement; the middle amercement also for breaking a healing wound, for beating a man till he is nearly dead, for rendering a man unable to move about or take food or speak, for tearing the eyes or other organs, and for breaking the shoulder, the arms or the thighs.—(Yājña. 2. 219-220.)

NOTES

'*Move, etc.*'—This includes urinating and the rest also.—(*Aparārka.*)

28. विष्णु 5. 70—72.] नेत्रकन्धराबाहुशङ्खसक्थ्नां भङ्गे चोत्तमम् । उभयनेत्रभेदिनं राजा यावज्जीवं बन्धनान्न मुञ्चेत्—तादृशमेव वा कुर्यात् ॥

28. The highest amercement for wounding the eye, or the neck, or an arm, or a bone, or a shoulder.—For striking out both eyes, the king shall inflict either imprisonment for life or a similar mutilation (*i.e.*, removal of the eyes).—(Viṣṇu, 5.70—72; in *Vivādaratnākara.*)

29. याज्ञवल्क्य 2. 303.] द्विनेत्रभेदिनो राजद्विष्टादेशकृतस्तथा ।
विप्रत्वेन च शूद्रस्य जीवतोऽष्टशतो दमः ॥

29. One who strikes out both eyes of a man,—one who follows the orders of the king's enemy,—a Shūdra who adopts the living of the Brāhmaṇa,—these shall be fined 800.—(Yājña. 2. 303.)

NOTES

In connection with the several alternative corporeal and monetary punishments prescribed, it has to be noted that the exact penalty to be inflicted in any particular case shall be determined by the seriousness of the injury and the degree of pain and suffering caused by it (see next para.) ; as also by the pecuniary circumstances of the culprit.—(*Vivādaratnākara*, p. 266.)

30. मनु 8. 286.] मनुष्याणां पशूनां च दुःखाय प्रहृते सति ।
यथा यथा महद् दुःखं दण्डं कुर्यात्तथा तथा ॥

30. When a hurt has been inflicted on men or animals,—with the motive of causing pain,—the king shall inflict punishment in proportion to the pain caused.—(Manu, 8. 286.)

NOTES

'*With the motive*'—That is, when the hurt is intentional, and not caused by carelessness.—What the text means is that in inflicting punishments, the attendant circumstances have to be taken into consideration in the apportioning of penalties.—(*Medhātithi.*)

31. हारीत] अधोवर्णानामुत्तमवर्णाक्रोशाक्षेपाभिभवेऽष्टौ पुराणाः । ग्रीवासञ्जनगलस्तनकचवक्त्रग्रहणेषु त्रिंशत् । रोमोत्पाटनतर्जनावगूरणेषु त्रिषष्टिः । शिखाकर्णाङ्गभङ्गच्छेदेषु द्विशतम् । पादताडनेऽनृताभिशंसने तदङ्गच्छेदः पञ्चशतं वा ।

31. If a man of a lower caste insults one of a higher caste, he shall be fined 8 *Purāṇas* ; 30 *Purāṇas*, if he catches hold of his neck or hair ; 63, if he uproots his hair or raises a weapon against him ; 200, if he tears his top-knot or ear or any other limb ; if he strikes him with his foot, that foot shall be cut off ; or he shall be fined 500.—(Hārīta in *Vivādaratnākara*, p. 266.)

32. याज्ञवल्क्य 2. 215.] विप्रपीडाकरं छेद्यमङ्गमब्राह्मणस्य तु ।
उद्गूर्णे प्रथमो दण्डः संस्पर्शे तु तदर्धकः ॥

32. If a non-Brāhmaṇa causes pain to a Brāhmaṇa, his offending limb shall be cut off ; if he raises a weapon against him, he shall suffer the first amercement ; half of it, if he merely touches him.—(Yājña. 2. 215.)

NOTES

The '*non-Brāhmaṇa*' meant here are the Kṣattriya and the Vaishya; the penalty for the Shūdra is much heavier, as laid down by Manu, 8. 279 (35, below).—(*Aparārka*).

33. नारद] येनाङ्गेनावरो वर्णो ब्राह्मणस्यापराध्नुयात् ।
तदङ्गं तस्य छेत्तव्यमेवं शुद्धिमवाप्नुयात् ॥

33. By whatever limb a man of a lower caste offends against the Brāhmaṇa, that limb shall be cut off.—(Nārada in *Vivādaratnākara*, p. 267; also Bṛhaspati in *Smṛtichandrikā*, p. 763.)

NOTES

By whatever limb a Shūdra strikes a Brāhmaṇa, that limb shall be cut off.—If he only raises his hand against him, then a fine and compensation.—If he only touches him, the fine shall be halved.—(Arthashāstra 3. 19.)

34. नारद] राजनि प्रहरेद् यस्तु कृतागस्यपि दुर्मतिः ।
शूल्यं तमग्नौ विपचेत् ॥

34. When a man strikes a king—even though the latter may have wronged him,—he shall be fastened to a stake and roasted.—(Nārada, 15. 31; in *Vivādaratnākara*, p. 267.)

NOTES

This applies to non-Brāhmaṇas—says *Vivādachintāmaṇi*, p. 117.

35. मनु 8. 279-280.] येन केनचिदङ्गेन हिंस्याच्छ्रेयांसमन्त्यजः ।
छेत्तव्यं तत्तदेवास्य तन्मनोरनुशासनम् ॥
पाणिमुद्यम्य दण्डं वा पाणिच्छेदनमर्हति ।
पादेन प्रहरन् कोपात् पादच्छेदनमर्हति ॥

35. With whatever limb the low-born man hurts a superior person, every such limb shall be cut off.—If he raises his hand or stick against him, his hand should be cut off; if he strikes in anger with the foot, his foot shall be cut off.—(Manu, 8. 279-280.)

36. मनु 8. 299-300.] भार्यापुत्रश्च दासश्च शिष्यो भ्राता च सोदरः ।
प्राप्तापराधास्ताड्याः स्यू रज्ज्वा वेणुदलेन वा ।
पृष्ठतस्तु शरीरस्य नोत्तमाङ्गे कदाचन ।
अतोऽन्यथा तु प्रहरन् प्राप्तः स्याच्चौरकिल्बिषम् ॥

36. The wife, the son, the slave, the servant or the younger brother may be beaten with a rope or split bamboo, when he has committed a fault,—but only on the back part of the body, never on the upper part ; one who strikes otherwise than this incurs the guilt of a thief.—(Manu, 8. 299-300 ; also Yama and Nārada in *Vivādaratnākara*, p. 272.)

NOTES

This is not meant to be taken literally ; it is a strongly-worded prohibition. The penalty in such cases shall be the same as in other cases of Hurt.—(*Medhātithi.*)

'*Back part.*'—*i.e.*, on such parts of the body as are not vital.

'*Upper part,*'—*i.e.*, on a vital part of the body.

37. गौतम] शिष्यशिष्टिरवधेन । अशक्तौ रज्जुवेणुदलाभ्यां तनुभ्याम् ।
अन्येन घ्नन् राज्ञा शास्यः ॥

37. The student shall be chastised without hurting him ;—if the teacher is lacking in strength, he shall punish him with a thin rope or with a thin split bamboo. If he strikes him with anything else, he should be punished by the king.—(Gautama in *Vivādaratnākara*, p. 272.)

38. आपस्तम्ब] अपराधेषु चैनं सततमुपालभेत । अतित्रास उदको-
पस्पर्शनमिति दण्डाः—यथामात्रमानिवृत्तेः ॥

38. If the pupil commits a fault, he shall be reprimanded ;—if it is necessary to inspire fear in his mind, water should be sprinkled over him ; this is all the punishment that should be inflicted ; and that too only in so far as he can bear it, and only until the offence ceases.—(Āpastamba in *Vivādaratnākara*, p. 272.)

39. नारद] पुत्रापराधेन पिता श्ववान् शुनि न दण्डभाक् ।
न मर्कटे च तत्स्वामी तेनैव प्रहितो न चेत् ॥

39. A father is not liable to be punished for an offence committed by his son ; nor is the owner of a dog or a monkey

responsible for any damage done by them—unless he should have set them to do it.—(Nārada, 15. 32, in *Vivādaratnākara*, p. 273.)

40. याज्ञवल्क्य 2. 299.] शक्तो ह्यमोचयन् स्वामी पक्षिणां श्रृङ्गिणां तथा ।
प्रथमं साहसं दद्यात् विक्रुष्टे द्विगुणं तथा ॥

40. When a bird or a horned animal has attacked a person,—and the owner, though able to save him, does not do so,—he should be fined the first amercement ; and double that amount, if he refuses to help even when the person attached has repeatedly called for it.—(Yājñavalkya, 2. 299.)

41. बृहस्पति 21.14.] वाक्पारुष्यादिना नीचो यः सन्तमभिलङ्घयेत् ।
स एव ताडयंस्तस्य नान्वेष्टव्यो महीभृता ॥

41. When a low-born person abuses a superior person,—the latter shall not be prosecuted if he beats the abuser.—(Bṛhaspati, 21.14 ; in *Vivādaratnākara*, p. 276 ; and Nārada, 15. 13 ; in *Vivādaratnākara*, p. 276 and in *Parāsharamādhava*, p. 284.)

42. नारद 15.11-12.] श्वपाकपशुचाण्डालवेश्यावधकवृत्तिषु ।
हस्तिपव्रात्यदासेषु गुर्वाचार्यातिगेषु च ॥
मर्यादातिक्रमे सद्यो घात एवानुशासनम् ।
न च तद् दण्डपारुष्ये दोषमाहुर्मनीषिणः ॥

42. If a *Shvapāka*, a eunuch, a *Chāṇḍāla*, a person making a living by prostitutes, a person living by slaughter, an elephant-driver, an apostate, a slave or one who has disregarded his preceptor—should offend against propriety and insult a superior person, immediate whipping should be his punishment.—Such whipping shall not be regarded as illegal assault.—(Nārada, 15. 11-12 ; in *Vivādaratnākara*, p. 276 and in *Parāsharamādhava*, p. 284.)

NOTES

If the person insulted is unable to inflict the whipping, the king himself shall step in and do it.—(*Vivādaratnākara*, p. 276.)

43. बृहस्पति 21. 15.] प्रातिलोम्यास्तथा चान्त्याः पुरुषाणां मलाः स्मृताः ।
ब्राह्मणातिक्रमे वध्याः न दातव्या दमं क्वचित् ॥

43. If persons begotten in the inverse order of castes, and members of the lowest caste should insult a Brāhmaṇa, their punishment shall be corporeal only ; they shall not be fined.—(Bṛhaspati, 21. 15 ; in *Vivādaratnākara*, p. 277.)

44. कात्यायन] अस्पृश्यधूर्तदासानां म्लेच्छानां पापकारिणाम् ।
प्रातिलोम्यप्रसूतानां ताडनं नार्थतो दमः ॥

44. For the untouchable, the rogue, the slave, *Mlechchha*, the worst sinners, and those born in the inverse order of castes,—the punishment shall be always corporeal, never monetary.—(Kātyāyana in *Vivādaratnākara*, p. 278.)

45. मनु 8. 281—283] सहासनमभिप्रेप्सुरुत्कृष्टस्यावकृष्टजः ।
कट्यां कृताङ्को निर्वास्यः स्फिचं वाऽस्यावकर्तयेत् ॥
अवनिष्ठीवतो दर्पात् द्वावोष्ठौ छेदयेन्नृपः ।
अवमूत्रयतः शिश्नमवशर्धयतो गुदम् ॥
केशेषु गृह्णतो हस्तौ छेदयेदविचारयन् ।
पादयोर्दाढिकायां च ग्रीवायां वृषणेषु च ॥

45. If a low-born person tries to occupy the same seat with his superior, he should be branded on the hip and banished ; or the king shall have his buttocks cut off.—If he spits against the superior, he should have his lips cut off ; if he urinates, then his penis ; and if he breaks wind, his anus.—If he catches hold of his hair, his hands shall be cut off ; also if he lays hold of the feet, the beard, the neck or the scrotum.—(Manu, 8. 281–283 ; and Nārada, 15. 26–28.)

NOTES

This refers to cases of the Shūdra insulting the Brāhmaṇa—says *Vivādachintāmaṇi*, p. 114.

46. गौतम] आसनशयनवाक्पथिषु समत्वं प्रेप्सुर्दण्ड्यः शतम् ॥

46. The inferior trying to equal the superior in the matter of sitting, sleeping, speaking and walking shall be fined a hundred.—(Gautama in *Vivādaratnākara*, p. 269.)

47. आपस्तम्ब] वाचि पथिशय्यायामासने इति समीभवतो दण्डताडनम् ।

47. On trying to equal the superior in the matter of speaking, walking, sleeping and sitting, one shall be beaten with a stick—(Āpastamba in *Vivādaratnākara*, p. 269.)

48. कात्यायन] वाक्पारुष्ये यथैवोक्तः प्रतिलोमानुलोमतः ।
तथैव दण्डपारुष्ये पात्यो दण्डो यथाक्रमम् ॥

48. The penalty laid down in the matter of defamation among persons of higher and lower castes shall be inflicted also in the same order as in the case of Assault also.—(Kātyāyana in *Mitākṣarā*, 2. 221 and in *Vivādaratnākara*, p. 269.)

49. विष्णु] एकं बहूनां निघ्नतां प्रत्येकश उक्तो दण्डो द्विगुणः ।
उत्क्रोशन्तमनभिधावतां तत्समीपवर्तिनां सतां च ॥

49. Where one person is attacked by several persons, the punishment for each of them shall be the double of that which has been ordained for a single assaulter.—The same double punishment is for those who, though on the spot, do not give assistance to the attacked person calling for help, or who run away after having come up.—(Viṣṇu, 5. 73-74.)

50. याज्ञवल्क्य 2. 221.] एकं घ्नतां बहूनां च यथोक्ताद् द्विगुणो दमः ।
कलहापहृतं देयं दण्डश्च द्विगुणस्ततः ॥

50. If several men attack a single man, the punishment for each of them shall be double of that ordained for a similar assault committed by a single assailant ; and each of them shall restore to the attacked person whatever he may have taken away from him in the quarrel, and also pay to the king a fine double the value of the article taken.—(Yājña. 2. 221.)

NOTES

'*Fine*'—This being the punishment for taking away the man's property by force.—(*Mitākṣarā.*)

COMPENSATION—DAMAGES.

51. कात्यायन] वाग्दण्डस्ताडनं चैव येषूक्तमपकारिषु ।
हृतं भग्नं सु दाप्यास्ते शोध्यं निःस्वैस्तु कर्मणा ॥

51. In cases of assault, in regard to which reprimand and fine have been laid down as punishment for the offenders, – any loss or damage that may have occurred shall be made good by cash payment or by labour.—(Kātyāyana in *Vivāda-ratnākara*, p. 270.)

52. मनु 8. 287.] अङ्गावपीडनायां च प्राणशोणितयोस्तथा ।
समुत्थानव्ययं दाप्यः सर्वदण्डमथापि वा ॥

52. In the case of injury to limbs, as also to strength and to blood, – the assailant should be made to pay the expenses of recovery to the injured person ; or (in the event of the injured person refusing to accept it) the whole amount may be paid to the king as fine.—(Manu, 8. 287.)

53. बृहस्पति] अङ्गावपीडने चैव छेदने भेदने तथा ।
समुत्थानव्ययं दाप्यः कलहापहृतं तथा ॥

53. When a limb has been injured, or broken, or cut off, the assailant should be made to pay the expenses incurred in the recovery, and also to restore whatever he may have taken away in the quarrel.—(Bṛhaspati in *Vivādaratnākara*, p. 270.)

54. याज्ञवल्क्य 2. 222.] दुःखमुत्पादयेद् यस्तु समुत्थानधनव्ययम् ।
दाप्यो दण्डं च यो यस्मिन् कलहे समुदाहृतः ॥

54. When a man has caused injury to another person, he should be made to pay the expenses for the recovery, as also the fine that has been ordained as penalty for the inflicting of that particular injury.—(Yājña. 2. 222.)

55. कात्यायन] देहेन्द्रियविनाशे तु यथा दण्डं प्रकल्पयेत् ।
तथा तुष्टिकरं देयं समुत्थानं च पण्डितैः ॥

55. When injury is caused to a limb or an organ, the assailant should be fined and should also be made to pay compensation and the expenses for recovery,—as also anything

that he may have taken away in the quarrel.—(Kātyāyana in *Vivādaratnākara*, p. 271.)

56. विष्णु 5. 75-76.] सर्वे च पुरुषपीडाकराः समुत्थानव्ययं दद्युः—ग्राम्यपशुपीडाकराश्च ।

56. Those who have hurt a man shall pay the expenses of his recovery ;—as also those who have hurt a domestic animal.—(Viṣṇu, 5. 75-76 ; in *Vivādaratnākara*, p. 271.)

MUTUAL ASSAULT

57. नारद 15. 8.] पारुष्ये सति संरम्भात् उत्पन्ने क्षुब्धयोर्द्वयोः ।
स मान्यते यः क्षमते दण्डभाग्योऽतिवर्तते ॥
पारुष्यदोषावृतयोर्युगपत्सम्प्रवृत्तयोः ।
विशेषश्चेन्न दृश्येत विनयः स्यात्समस्तयोः ॥

57. When a quarrel has arisen between two angered persons, he who exercises forbearance should be honoured, while he who transgresses should be punished.—When both parties have been guilty of assault,—and both have commenced the quarrel simultaneously,—they shall suffer the same punishment, unless some difference can be found in the behaviour of either.—(Nārada, 15. 8 ; in *Vivādaratnākara*, p. 275 and in *Vīramitrodaya*, p. 471.)

58. बृहस्पति 21. 13.] द्वयोः प्रहरतोर्दण्डः समयोऽस्तु समः स्मृतः ।
आरम्भकोऽनुबन्धी च दाप्यः स्यादधिकं दमम् ॥

58. When two persons strike each other simultaneously, the punishment shall be the same for both ; the first aggressor, as well as he who continues the affray, shall pay a higher fine.—(Bṛhaspati, 21. 13 ; in *Vivādaratnākara*, p. 275.)

59. नारद 15. 10.] द्वयोरापन्नयोस्तुल्यमनुबध्नाति योऽधिकम् ।
स तयोर्दण्डमाप्नोति पूर्वो वा यदि वोत्तरः ॥

59. When both parties are equally implicated, he of the two shall receive punishment who, be he the first aggressor or not, persists in the quarrel.—(Nārada, 15. 10 ; in *Vivādaratnākara*, p. 275 and *Vīramitrodaya*, p. 471.)

60. नारद 15. 9.] पूर्वमाक्षारयेद् यस्तु नियतं स्यात् स दोषभाक् ।
पश्चाद् यः सोऽप्यसत्कारी पूर्वे तु विनयो गुरुः ॥

60. He who is the first aggressor is decidedly criminal; he who returns the insult is likewise culpable; but he who began shall suffer the heavier punishment.—(Nārada, 15. 9; in *Vivādaratnākara*, p. 275.)

61. कात्यायन] आभीषणेन दण्डेन प्रहरेद्यस्तु मानवः ।
पूर्वं वा पीडितो वाऽथ स दण्ड्यः परिकीर्तितः ॥

61. When a man strikes another with a dangerous weapon, he shall be regarded as criminal and liable to punishment,—even though he may have been the first to be hurt by the other party.—(Kātyāyana in *Vivādaratnākara*, p. 276.)

62. बृहस्पति 21. 4.] आक्रुष्टस्तु समाक्रोशन् ताडितः प्रतिताडयन् ।
हत्वाऽऽततायिनं चैव नापराधी भवेन्नरः ॥

62. He who, being abused, returns the abuse,—or having been struck, returns the blow—or one who strikes an assassin attacking him,—commits no wrong and shall not be punished.—(Bṛhaspati, 21. 4; in *Vivādaratnākara*, p. 276.)

NOTES

This refers to cases where the person striking is of a superior status; where he is of inferior status, he is certainly liable to punishment.—(*Vivādaratnākara*, p. 276.)

CRUELTY TO ANIMALS

63. याज्ञवल्क्य 2. 225-226.] दुःखेऽथ शोणितोत्पादे शाखाङ्गच्छेदने तथा ।
दण्डः क्षुद्रपशूनां तु द्विपणप्रभृतिः क्रमात् ॥
लिङ्गस्य छेदने मृत्यौ मध्यमो मूल्यमेव च ।
महापशूनामेतेषु स्थानेषु द्विगुणो दमः ॥

63. (*a*) For hurting small animals without fetching blood, (*b*) for wounding them to bleeding, (*c*) for breaking the horn, and (*d*) for breaking a limb,—the fine shall be (*a*) 2, (*b*) 4, (*c*) 8 and (*d*) 16 *Paṇas* respectively.—For cutting off their genital organ, or for killing them, the man shall pay to the king the middle

amercement and also the price of the animal to the owner.—In the case of the larger animals, the punishments shall be double of these.—(Yājña. 2. 225-226.)

NOTES

'*Small animals*'—Goat, sheep and the like.—'*Larger animals*'—Horses and the like.—(*Vivādaratnākara*, p. 278.)

For hurting small animals, a fine of one or two *Paṇas* ; —double of this, if it bleeds ; - the fines in the case of larger animals shall be double, and the cost of medication shall be paid —(*Arthashāstra*, 3. 19.)

64. विष्णु] पशूनां पुंस्त्वोपघातकारी [कार्षापणशतं दण्ड्यः]।

64. For depriving an animal of its genital organ, the fine is 100 *Kārṣāpaṇas*.—(Viṣṇu in *Vivādaratnākara*, p. 278.)

65. विष्णु 5. 48—54.] गवाश्वगजोष्ट्रोपघाती चैकैकपादः कार्यः। विमांसविक्रयी च ग्राम्यपशुघाती कार्षापणशतं दण्ड्यः—पशुस्वामिनश्च तन्मूल्यं दद्यात्। अरण्यपशुघाती पञ्चाशतं कार्षापणानाम्। पक्षिघाती मत्स्यघाती च दश कार्षापणान्। कीटोपघाती कार्षापणम्॥

65. For hurting an elephant, or a horse, or a camel or a cow, the criminal shall have one hand and one foot lopped off ;—so also the seller of forbidden meat.—He who hurts a domestic animal shall pay 100 *Kārṣāpaṇas* ; and he shall make good its value to the owner.—He who hurts wild animals shall pay 50 *Kārṣāpaṇas*.—He who hurts birds, or fishes, shall pay 10 *Kārṣāpaṇas*.—He who hurts insects shall pay one *Kārṣāpaṇa*.—(Viṣṇu, 5. 48—54 ; in *Vivādaratnākara*, p. 278 ; *Parāsharamādhava*, p. 289.)

NOTES

The value of the animal shall be made good only if the animal has died ; if it has not died, the person is to pay the expenses of its cure.—(*Parāsharamādhava*, p. 289.)—In view of this remark, the term of '*Upaghāta*' should be rendered as 'hurting' ; this is also indicated by the prefix '*Upa*.'

'*Forbidden meat*'—Flesh of the dog, or the jackal and such animals. (*Vivādaratnākara*, p. 278),—'such meat as cannot and should not be eaten.' (*Vivādachintāmaṇi*, p. 122.)

66. कात्यायन] त्रिपणो द्वादशपणो घाते तु मृगपक्षिणाम् ॥
सर्पमार्जारनकुलश्वशूकरवधे नृणाम् ॥

66. For killing birds and animals—such as snakes, cats, mongoose, dogs and hogs,—the fine shall be 3 or 12 *Paṇas*, (according to the character of the animal killed).—(Kātyāyana in *Vivādaratnākara*, p. 279.)

67. मनु (?)] गोकुमारीदेवपशूनुक्षाणं वृषभं तथा ।
वाहयन् साहसं पूर्वं प्राप्नुयादुत्तमं वधे ॥

67. For employing, for drawing or carrying, a cow in heat, or an animal dedicated to a deity, or a breeding bull, or an old bull,—one should be fined the first amercement;—the highest amercement for killing any of these.—(Attributed to Manu in *Vivādaratnākara*, p. 279.)

68. बृहस्पति 21. 16.] श्रान्तान् क्षुधार्तान् तृषितानकाले वाहयेत्तु यः ।
स गोघ्नो निष्कृतिं कार्यो दाप्यो वा प्रथमं दमम् ॥

68. He who employs for drawing or carrying, at an improper time, tired or hungry or thirsty animals, shall be compelled to atone for it in the same way as a cow-killer, or to pay the first amercement.—(Bṛhaspati, 21. 16.)

69. कात्यायन] श्रान्तान् क्षुधार्तान् तृषितानकाले वाहयेत्तु यः ।
खरगोमहिषोष्ट्रादीन् प्राप्नुयात् पूर्वसाहसम् ॥

69. He who employs for drawing or carrying, at an improper time, a tired or hungry or thirsty mule, or bullock, or buffalo, or camel, shall be fined the first amercement.—(Kātyāyana in *Vivādaratnākara*, p. 280.)

DAMAGE AND HURT CAUSED BY ANIMALS AND CONVEYANCES

70. याज्ञवल्क्य 2. 297.] चतुष्पादकृतो दोषो नापैहीति प्रजल्पतः ।
काष्ठलोष्ठेषु पाषाणबाह्युग्यकृतस्तथा ॥

70. For any injury that may be caused—through a piece of wood, or clod of earth, or an arrow or a brick or a stone or the animal or the conveyance—while a quadruped is being exercised, the man in charge of the animal is not respon-

sible, if he has already warned the men about the place to 'move away.'—(Yājña. 2. 297.)

71. याज्ञवल्क्य 2. 298.] छिन्ननस्येन यानेन तथा भग्नयुगादिना ।
पश्चाच्चैवापसरता हिंसने स्वाम्यदोषभाक ॥

71. If an injury has been caused by a conveyance the nose-string of which has been snapped, or whose shafts have been broken, or while it was moving backwards,—its owner cannot be held responsible for it.—(Yājña. 2. 298.)

72. मनु 8. 290—292.] यानस्य चैव यातुश्च यानस्वामिन एव च ।
दशातिवर्तनान्याहुः शेषे दण्डो विधीयते ॥
छिन्ननास्ये भग्नयुगे तिर्यक्प्रतिमुखागते ।
अक्षभङ्गे च यानस्य चक्रभङ्गे तथैव च ॥
छेदने चैव यन्त्राणां योक्त्ररश्म्योस्तथैव च ।
आक्रन्दे चाप्यपेहीति न दण्डं मनुरब्रवीत् ॥

72. When there is snapping of the nose-string, when the yoke is broken, when it turns sideways or backwards, when the axle breaks, when the wheel is broken,—when the fittings or the yoking strap or the bridle are torn, and when there has been the loud cry 'get out of the way,'—there is no punishment either for the driver or the owner. In all other cases, the driver or the owner is responsible for any injury that may be caused by the conveyance.—(Manu, 8. 290—292.)

73. मनु 8. 293-294.] यत्रापवर्तते युग्यं वैगुण्यात् प्राजकस्य तु ।
तत्र स्वामी भवेद् दण्ड्यो हिंसायां द्विशतं दमम् ॥
प्राजकश्चेद्भवेदाप्तः प्राजको दण्डमर्हति ।
युग्यस्थाः प्राजकेऽनाप्ते सर्वे दण्ड्याः शतं शतम् ॥

73. When, however, the cart turns off through the driver's ineptitude, and causes injury, the owner of the cart shall be punished with a fine of 200.—But if the driver is a trained one, it is he that should be punished; if the driver is untrained, all the occupants of the cart should be fined a hundred each.—(Manu, 8. 293-294.)

74. मनु 8. 295.] स चेत्तु पथि संरुद्धः पशुभिर्वा रथेन वा ।
प्रमापयेत् प्राणभृतस्तत्र दण्डोऽविचारितः ॥

74. If the cart is obstructed on the road, and this sudden stoppage of the cart causes the death of living beings either behind the cart or on its sides,—through the careless handling of the animals by the driver,—then the driver is certainly liable to punishment (detailed below).—(Manu, 8. 295.)

NOTES

If on being stopped by an obstacle in front, the driver continues to urge the horses or handles them carelessly or pulls them up suddenly,—and another cart happens to be close by,—the sudden stoppage of the former cart may cause the death of living beings,—then the driver is liable to punishment.—By another interpretation of the text, the meaning is that the driver is *not liable* to punishment, when the fast-running horses, on being suddenly pulled up at the sight of some obstacle in front, turn off side-ways and kill the men that may be there; as in this case the driver is not to blame.—(*Medhātithi.*) [But from what follows, this latter explanation is not acceptable.]

75. मनु 8. 296.] मनुष्यमारणे क्षिप्रं चौरवत् किल्विषं भवेत् ।
प्राणभृत्सु महत्स्वर्धं गोगजोष्ट्रहयादिषु ॥

75. In the case of a man being killed (in the above circumstances) outright, the driver would be punishable like the 'thief';—half of that in the case of the larger animals, such as cows, elephants, camels, horses and so forth.—(Manu, 8. 296.)

NOTES

The mention of 'half' may justify the conclusion that the penalty of death—which is one of the punishments of a thief,—is not meant to be applicable to the present case. But there is nothing to justify our restricting it to the 'highest fine' of 1,000; as there is no reason why we should exclude such other penalties of the 'thief' as 'confiscation of the entire property' and so forth.—(*Medhātithi.*)

76. मनु 8. 297-298.] क्षुद्रकाणां पशूनां तु हिंसायां द्विशतो दमः ।
पञ्चाशत्तु भवेद्दण्डः शुभेषु मृगपक्षिषु ॥
गर्दभाजाविकानां तु दण्डः स्यात् पञ्चमाषिकः ।
माषिकस्तु भवेद् दण्डः श्वसूकरनिपातने ॥

76. In the case of hurting petty animals, the fine is 200; and 50, in the case of the auspicious birds and quadrupeds.—

In the case of donkey, goat and sheep, the fine shall consist of five '*Māṣas*'; and it shall be one '*Māṣa*' for the killing of a dog or a pig.—(Manu, 8. 297-298.)

NOTES

'Auspicious birds'—*e.g.*, the parrot.—'*Auspicious quadrupeds*'—*e.g.*, the *Ruru* deer.—'*Māṣa*'—2 *Kṛṣhalas*.—(*Vivādaratnākara*, p. 233.)

77. कात्यायन] प्रमापणे प्राणभृतां प्रतिरूपं तु दापयेत् ।
तस्यानुरूपं मूल्यं वा दाप्य इत्यब्रवीन्मनुः ॥

77. If a man kills an animal, he should be made to pay a fine in keeping with the character of the animal killed, and also to pay its value to the owner.—(Kātyāyana in *Vivādaratnākara*, p. 284.)

78. मनु 8. 285.] वनस्पतीनां सर्वेषामुपभोगो यथा यथा ।
तथा तथा दमः कार्यो हिंसायामिति धारणा ॥

78. In the case of trees (and other useful immovables), the punishment inflicted for injuring them should be in accordance with their usefulness.—(Manu, 8. 285.)

NOTES

'*Other immovables*'—These are included under 'trees'—says *Parāsharamādhava*, p. 292.

79. याज्ञवल्क्य 2. 227.] प्ररोहिशाखिनां शाखास्कन्धसर्वविदारणे ।
उपजीव्यद्रुमाणां च विंशतेर्द्विगुणा दमाः ॥

79. In the case of trees with offshoots, and of food-yielding trees, the cutting of (*a*) the branches, (*b*) the subsidiary trunks and (*c*) the entire tree renders the man liable to the fine of (*a*) 20, (*b*) 40, and (*c*) 80 *Paṇas* respectively.—(Yājña. 2. 227.)

80. याज्ञवल्क्य 2.228.] चैत्यश्मशानसीमासु पुण्यस्थाने सुरालये ।
जातद्रुमाणां द्विगुणा दमा वृक्षे च विश्रुते ॥

80. In the case of trees growing on the boundaries of sacred mounds and cremation-grounds, or on a sacred spot,

or in a temple,—the punishment shall be double (of that mentioned in the preceding rule).—(Yājña. 2. 228.)

81. याज्ञवल्क्य 2. 229.] गुल्मगुच्छक्षुपलताप्रतानौषधिवीरुधाम् ।
पूर्वस्मृतादर्धदण्डः स्थानेषूक्तेषु कर्तने ॥

81. In the case of a thicket, a clump, a bush, a creeper, a low-spreading plant, a medicinal herb, or a spreading creeper growing on the above-mentioned spots,—if a man cuts them, the fine shall be half of that mentioned above (in rule 80).—(Yājña. 2. 229.)

82. विष्णु 5. 55–59.] फलोपभोगद्रुमच्छेदी तूत्तमसाहसं दण्ड्यः । पुरुषोपभोगच्छेदी मध्यमम् । वल्लीगुल्मलताच्छेदी कार्षापणशतम् । तृणच्छेद्येकम् । सर्वेषां च तत्स्वामिनां तदुत्पत्तिं दण्डपारुष्यम् ।

82. A feller of trees yielding fruit shall pay the highest amercement.—A feller of trees yielding blossoms only shall pay the second amercement.—He who cuts creepers, shrubs or climbing plants shall pay a hundred *Kārṣāpaṇas*.—He who cuts grass shall pay one *Kārṣāpaṇa*.—All these offenders shall make good to the owners of the trees, etc., the revenue which they were yielding.—(Viṣṇu, 5. 55—59.)

83. वशिष्ठ] फलपुष्पोपगमान् वृक्षान्न हिंस्यात् । कर्षणार्थं वोपहन्यात्—गार्हस्थ्याङ्गे च ।

83. One shall never cut trees yielding fruits or flowers.—One may cut them for agricultural purposes, or for household purposes.—(Vashiṣtha in *Vivādaratnākara*, p. 286.)

NOTES

For cutting the offshoots of such large trees in a public garden or, park, as yield flowers and fruits and shade—a fine of 6 *Paṇas* ;—for cutting small branches, 12 *Paṇas* ;—for cutting large branches, 24 *Paṇas* ; -for damaging the trunk, 250 *Paṇas* ;—for cutting the trunk, 500 *Paṇas*.—For cutting flowering and fruit-bearing creepers and clumps, the fine shall be half ; as also in the case of trees in sacred places, hermitages and cremation grounds.—(*Arthashāstra*, 3. 19.)

84. याज्ञवल्क्य 2. 223.] अभिघाते तथाच्छेदे भेदे कुड्यावपातने ।
पणान् दाप्यः पञ्च दश विंशतिं तद्व्ययं तथा ॥

84. For damaging a wall, the fine is 5 *Paṇas* ; for cracking it, 10 *Paṇas* ; for cutting it, 20 *Paṇas* ; and for pulling it down, 35 *Paṇas ;* and in each case the cost of the repairing and rebuilding shall be paid to the owner.—(Yājña. 2. 223.)

NOTES

For striking against another man's wall and shaking it a fine of 3 *Paṇas* ;—for cutting and piercing it, 6 *Paṇas* ;—for pulling it down, 12 *Paṇas* ; and in each case the cost of repairing.—(*Arthashāstra*, 3. 19.)

85. याज्ञवल्क्य 2. 224.] दुःखोत्पादि गृहे द्रव्यं क्षिपन् प्राणहरं तथा ।
षोडशाद्यः पणान् दाप्यो द्वितीयो मध्यमं दमम् ॥

85. If a man throws into another man's house such substances as cause pain and suffering (such as thorns), he shall be fined 16 *Paṇas*. If he throws such things as are a danger to life (such as snakes), he should be fined the middle amercement.—(Yājña. 2. 224 and *Arthashāstra*, 3. 19, where however, the fines are 12 *paṇas* and the 'lowest amercement.')

86. मनु 8. 288-289.] द्रव्याणि हिंस्याद्यो यस्य ज्ञानतोऽज्ञानतोऽपि वा ।
स तस्योत्पादयेत्तुष्टिं राज्ञे दद्याच्च तत्समम् ॥
चर्मचार्मिकभाण्डेषु काष्ठलोष्टमयेषु च ।
मूल्यात् पञ्चगुणो दण्डः पुष्पमूलफलेषु च ॥

86. When a man, intentionally or unintentionally, damages the goods of another, he shall give satisfaction to him and pay to the king a fine equal to it in value.—(Manu, 8. 288).—But in the case of leather and leathern vessels, and in that of those made of wood or clay, the fine shall be five times their value ; as also in the case of flowers, roots and fruits.—(Manu, 8. 289.)

NOTES FROM ARTHASHASTRA

If a man touches another on any part of the body below the navel,—with his hands, mud, ashes, or dust,—he shall be fined 3 *Paṇas*.—If he touches him with the same things when they are unclean,—or if he touches him with his

feet or with his spittings,—the fine shall be 6 *Paṇas*.—If he touches him with such unclean things as vomits, urine or fasces, the fine shall be 12 *Paṇas*.—If all this touching is done above the navel, the fine shall be doubled in each case.—If on the head, then it will be quadrupled.—This among equals.—If the persons touched are superior persons, the fines shall be doubled; if they are inferior, the fine shall be halved. In the case of women being the victim, the fines shall be doubled.—If the touching has been done through carelessness or ignorance, the fines shall be halved.—For catching the legs, clothes, hands or hair, the fine shall be up to 6 *Paṇas*.—For pressing, or encircling with the arms, or smearing soot, or dragging on the round, or sitting over him,—the first amercement.—If he fells him on the ground and goes off, the fine shall be halved.—(*Arthashāstra*, 3. 19.)

For raising one's hand against another,—a fine between 3 and 12 *Paṇas*;—double of that if he raises the feet;—if with painful things (like thorns), 250 *Paṇas*; if with things that are a danger to life, 500 *Paṇas*—(*Arthashāstra*, 3. 19.)

For striking, without fetching blood, with a piece of wood, or a clod of earth, or stone, or an iron stick, or a rope, 24 *Paṇas*;—the double of this, if blood is fetched; except when what is let out is diseased blood.—(*Arthashāstra*, 3. 19.)

For striking a man till he is nearly dead;—but without fetching blood,—and for twisting the hands or feet,—a fine of 250 *Paṇas*;—also for breaking legs or hands or teeth,—and for cutting the ear or the nose, and for tearing open a wound; except in the case of malignant wounds.—(*Arthashāstra*, 3. 19.)

For breaking the ankle, or the neck,—for piercing the eye,—and for disabling a man from speaking, walking and eating,—a fine of 500 *Paṇas*; and also the expenses of medication.—If the man dies, the striker is to be treated like a criminal.—(*Arthashāstra*, 2. 19.)

For striking a member of an assembly,—the fine shall be double.—(*Arthashāstra*, 3. 19.)

A guilty person should never be let of.—(*Arthashāstra*, 3. 19.)

In a matter of assault, it does not matter who lodges the first complaint; the case is to be decided entirely on the basis of the evidence that is adduced.—(*Arthashāstra*, 3. 19.)

If a person accused of causing hurt does not refute the charge on the same day, he should be convicted.—(*Arthashāstra*, 3. 19.)

[This is as against the 'older view' that no notice need be taken of a quarrel or assault that happened long ago.]

If in a quarrel, one party takes away anything belonging to the other, he should be fined 10 *Paṇas*;—if he damages a small article, he should be made to pay its price and an equal amount as fine;—if he damages a bigger article, he should be made to pay its price and double that amount as fine.—If the thing damaged is a cloth or an ornament or a golden vessel, he shall pay its price and also a fine of 250 *Paṇas*.—(*Arthashāstra*, 3. 19.)

CHAPTER XVII

THEFT

(See Preliminary Note to Chap. XIII.)

DEFINITION

1. मनु 8. 332.] स्यात् साहसं त्वन्वयवत् प्रसभं कर्म यत्कृतम् ।
निरन्वयं भवेत् स्तेयं कृत्वाऽपव्ययते च यत् ॥

1. If an act is committed with violence and in the presence of men, it is an 'act of violence'; it is 'theft' when done in the absence of men, and when denied after having been done;—(Manu, 8. 332; also Kātyāyana in *Vivādaratnākara*, p. 286, and in *Smṛtichandrikā*, p. 733.)

NOTES

'*Act of violence,*'—such as tearing clothes, setting fire, taking away another's property, and so forth; the 'taking of another's property' alone is what is dealt with here; the other 'acts of violence' being reserved for a later chapter.

Whatever act is committed by force by persons inflamed with the pride of power, is called an 'act of violence.'—(Nārada, 14.1.)—'Theft' is a special form of it, with this difference that while the 'act of violence' is done by force, 'theft' is done with stealth (or fraud). It is of three kinds, according as the articles purloined are of small, middling or superior value.—Earthenware a seat, a couch, bone, wood, leather, grass, legume, grain and prepared food—these are articles of 'small' value.—Clothes other than silk, cattle other than cows, metals other than gold, rice and barley,—these are articles of middling value.—Gold, precious stones, silks, women, men, cows, elephants, horses, things dedicated to deities, a Brāhmaṇa, the king,—these are articles of 'superior value.'—(Nārada, 14. 13—16.)

Taking away, by various secret ways, the property of persons asleep, or intoxicated, or insane, has been held to be 'theft.'—(Nārada, 14.17.)

2. मनु 9. 256.] द्विविधांस्तस्करान् विद्यात् परद्रव्यापहारकान् ।
प्रकाशांश्चाप्रकाशांश्च ॥

2. There are two kinds of 'theft'—the 'open' and the 'secret.'—(Manu, 9. 256; Vyāsa in *Vivādaratnākara*, p. 289; and Bṛhaspati, 22. 2.)

3. मनु 9. 257—259.] प्रकाशवञ्चकास्तेषां नानापण्योपजीविनः ।
प्रच्छन्नवञ्चकास्त्वेवं स्तेनाटव्यादयो जनाः ॥
उत्कोचकाश्चौपधिका वञ्चकाः कितवास्तथा ।
मङ्गलादेशवृत्ताश्च भद्रप्रेक्षणिकैः सह ॥
असम्यक्कारिणश्चैव महामात्राश्चिकित्सकाः ।
शिल्पोपचारयुक्ताश्च निपुणाः पण्ययोषितः ॥
एवमाद्यान् विजानीयात् प्रकाशान् लोककण्टकान् ।
विगूढचारिणश्चान्यान् अनार्यानार्यलिङ्गिनः ॥

3. The 'open' thieves are those who make a living by dealing in various commodities; and the 'secret' thieves are burglars, robbers in forests and so forth, as also those who accept bribes, dissemblers, cheats, gamesters, fortune-tellers, palmists, misbehaved high officials and physicians, art-exhibitors, deceitful harlots—these and others of the same kind one should know as the 'open thorns' of the people; also others who are dissemblers, rogues in the guise of gentlemen. (Manu, 9. 257–259.)

NOTES

'*Dissemblers*'—Who say one thing and do another. '*Gamesters*'—those who take to gambling for the sake of profit. '*Cheats*'—Thugs. '*High officials*'—*e.g.*, the Minister, the Priest and other attendants of the King.—(*Medhātithi.*)

4. बृहस्पति 22. 3—5.] नैगमा वैद्यकितवाः सभ्योत्कोचकवञ्चकाः ।
दैवोत्पातविदो भद्राः शिल्पज्ञाः प्रतिरूपकाः ॥
अक्रियाकारिणश्चैव मध्यस्थाः कूटसाक्षिणः ।
प्रकाशतस्करा ह्येते तथा कुहकजीविनः ॥
सन्धिच्छेदः पान्थमुषो द्विचतुष्पदहारिणः ।
उत्क्षेपकाः शस्यहरा ज्ञेयाः प्रच्छन्नतस्कराः ॥

4. Fraudulent traders, quacks, gamesters, corrupt judges, those who accept bribes, cheats, persons pretending to interpret omens or to perform propitiatory rites, low artists, counterfeiters, hired servants shirking work, roguish umpires, perjured witnesses, and jugglers,—these are open thieves:—Housebreakers, highway men, robbers of bipeds and quadrupeds, thieves of clothes and the like are the 'secret thieves.'—(Bṛhaspati, 22. 3–5; in *Vivādaratnākara*, pp. 290 and 292.)

NOTES

'*Fraudulent traders*'—Those who cheat through the use of false weights and measures;—'*quacks*'—those who make money by intentionally prolonging the sickness of patients;—'*gamblers*'—those who cheat at gambling games;—'*those who accept bribes,*' while holding high office;—'*cheats*'—those who join a corporation and defraud the other members;—*Counterfeiters*'—those who make money by making counterfeit images and signs.—[*Vivādaratnākara*, pp. 290 and 292; in the latter place we find the term '*utkṣepakāḥ*'—'Lifters,' explained as those who snatch away things from near the owner who is inattentive.

5. नारद] प्रकाशवञ्चकास्तत्र कूटमानतुलाश्रिताः ।
उत्कोचकाः सोपधिकाः कितवाः पण्ययोषितः ॥
प्रतिरूपकराश्चैव मंगलादेशकारिणः ।
इत्येवमादयो ज्ञेयाः प्रकाशास्तस्करा भुवि ॥

5. Those traders who use fraudulent weights and measures, those who accept bribes, cheats, gamesters, harlots, counterfeiters, fortune-tellers, and so forth are 'open thieves.'—(Nārada in *Vivādaratnākara*, p. 290 and *Smṛti-chandrikā*, p. 736.)

6. व्यास] प्रकाशापणसंस्थाश्च नानापण्योपजीविनः ।
प्रकाशवञ्चका ज्ञेया भिषक्प्रभृतयोऽपरे ॥

6. Persons trading fraudulently in various commodities in the open market, quacks and the rest are 'open thieves.'—(Vyāsa in *Vivādaratnākara*, p. 291.)

7. व्यास] तुलामानविशेषेण लेख्येन गणनेन च ।
अर्घस्य वृद्धह्रासेन मुष्णन्ति वणिजो नरान् ॥
तद्द्रव्यसदृशैरन्यैर्हीनमूल्यैर्विमिश्रणम् ।
कुर्वन्त्यौपधिकाश्चान्ये पण्यानां परिवर्तनम् ॥

7. Traders rob people by tampering with weights and measures and with accounts and countings, and also by reducing and enhancing the price of commodities; they adulterate superior with inferior goods and thereby defraud people.—(Vyāsa in *Vivādaratnākara*, p. 295, and in *Vivāda-chintāmaṇi*, p. 124.)

8. व्यास] साधनाङ्गान्विता रात्रौ विचरन्त्यविभाविताः ।
अविज्ञातनिवेशाश्च ज्ञेयाः प्रच्छन्नतस्कराः ॥
उत्क्षेपकः सन्धिभेत्ता पान्थमुट् ग्रन्थिभेदकः ।
स्त्रीपुंसयोः पशुस्तेयी चौरो नवविधः स्मृतः ॥

8. Those who, equipped with the requisite implements, roam about undetected at night, and whose place of residence is unknown, are called 'secret thieves';—to this class belongs (1) the lifter, (2) the house-breaker, (3) the highway robber, (4) the cutpurse, the stealer of (5) women, (6) men, (7) cows, (8) horses, and (9) cattle.—(Vyāsa in *Vivādaratnākara*, p. 292; *Smṛtichandrikā*, p. 736; *Vīramitrodaya*, p. 492.)

NOTES

'*Granthibhedakaḥ*'—rendered here as 'cutpurse' according to the explanation of *Vīramitrodaya* (p. 492), has been explained by *Vivāda-chintāmaṇi* (p. 137) as 'one who unties the knot of the rope to which cattle is tied, in order to enable the thieves to steal them.'

INVESTIGATION

9. मनु 9. 261-262.] तान् विदित्वा सुचरितैर्गूढैस्तत्कर्मकारिभिः ।
चारैश्चानेकसंस्थानैः प्रोत्साद्य वशमानयेत् ॥
तेषां दोषानभिख्याप्य स्वे स्वे कर्मणि तत्त्वतः ।
कुर्वीत शासनं राजा सम्यक् सारापराधतः ॥

9. Having discovered the thieves through well-behaved and disguised men following the same occupation, and also through spies variously disguised,—the king shall exterminate them and bring them under his control.—Having truly proclaimed their crimes in connection with their respective acts, the king shall duly inflict punishment on them, in accordance with their crimes and capacities.—(Manu, 9. 261-262; also Nārada in *Vivādaratnākara*, p. 282.)

10. बृहस्पति 22. 6.] संसर्गचिह्नलोप्त्रैश्च विज्ञाता राजपूरुषैः ।
प्रदाप्यापहृतं शास्या दमैः शास्त्रप्रचोदितैः ॥

10. Thieves, having been traced by the king's officers through their association with well-known thieves, or by marks

of criminality, or by the possession of stolen goods, shall be compelled to restore the plunder and shall be visited with punishments ordained in law.—(Bṛhaspati, 22. 6 ; in *Vivādaratnākara*, p. 293.)

NOTES

'*Marks of criminality*'—Such as the possession of stealing implements. —(*Smṛtichandrikā.*)

Any one of the signs mentioned would justify the establishing of the guilt of the man.—(*Vivādachintāmaṇi*, p. 124.)

11. नारद 24. 18.] सहोढग्रहणात् स्तेयं होढेऽसत्युपयोगतः ।
शङ्का त्वसज्जनैकार्थ्यात् अनायव्ययतस्तथा ॥

11. Where stolen goods are found with a man, he may be presumed to be the thief ; even when the goods are not found with him, his guilt would be presumed from his luxurious mode of life (otherwise unaccountable) ; suspicion fastens on him also by his associating with wicked persons, and by his indulging in extravagance without any ostensible income.—(Nārada, 24.18 ; in *Vivādaratnākara*, p. 333.)

12. नारद] अहोढान् विमृशेच्चौरान् गृहीतान् परिशङ्कया ।
तथोपधाभिश्चित्राभिर्ब्रूयुस्तथ्यं यथा हि ते ॥
देशं ग्रामं दिशं नाम जातिं वासं प्रतिश्रयम् ।
कृतकार्यसहायास्तु प्रष्टव्याः स्युर्निगृह्य ते ॥
वर्णस्वराकारभेदात् सन्दिग्धविनिवेदनात् ।
अदेशकालवृत्तत्वात् निवासस्याविशोधनात् ॥
असद्व्ययात् पूर्वचौर्यादसत्संसर्गकारणात् ।
लेशैरप्यनुगन्तव्या न होढेनैव केवलम् ॥

12. Where a man has been arrested on suspicion, and no stolen goods have been found on him, the king shall investigate the case by various methods, trying to elicit the truth from him. He should be questioned regarding his country, village, direction, name, caste, lodging, associates in business. —The man shall be dealt with not only on the basis of the presence of stolen goods, but also on the variations in his complexion and voice, on his making dubious statements, on his carrying on his work at improper times and places, on his

failing to give suitable explanation regarding his habitation, on his improper extravagance, on his previous conviction as a thief and on his keeping bad company.—(Nārada in *Vivāda-ratnākara*, p. 333, and in *Aparārka*, p. 840.)

13. याज्ञवल्क्य 2.266.–268.] ग्राहकैर्गृह्यते चौरो लोप्त्रेणाथ पदेन वा ।
पूर्वकर्मापराधी च तथा चाशुद्धवासकः ॥
अन्येऽपि शङ्कया ग्राह्या नामजात्यादिनिह्नवैः ॥
द्यूतस्त्रीपानसक्ताश्च भिन्नशुष्कमुखस्वराः ॥
परद्रव्यगृहाणां च प्रच्छका गूढचारिणः ।
निरायव्ययवन्तश्च विनष्टद्रव्यविक्रयाः ॥

13. The thief is to be arrested by policemen either through the stolen goods or through footprints, or on the basis of his previous conviction of a similar offence, or on that of his being unable to give a suitable account of his habitation.—Other people also may be arrested on suspicion, when they are found to conceal their names, caste and other things,—when they are found to be addicted to gambling, women and wine, and when, on being questioned, their mouth becomes parched and voice husky; when they are found to be making uncalled for enquiries regarding the house and wealth of men,—and when their movements are mysterious, and they are found to be spending much without having any income; and when they are detected selling stolen articles.—(Yājña. 2. 266—268.)

NOTES

'*Footprints*'—*i.e.*, following up his steps from the day of the theft onwards; when the footprint left in the mud or the spot where the theft has occurred tallies, in its measurement with the foot of the suspected person; specially when the footprint of the cow stolen is found all along the path leading to the man's house and stops there;—he is to be regarded as the thief.—(*Aparārka.*)

'*Failing to give a suitable account of his habitation.*'—According to *Mitākṣarā* the term *ashuddhavāsakaḥ* means 'one whose habitation is not known.'

'*Women.*'—Prostitutes (*Mitākṣarā.*)

'*Being questioned*'—Regarding his whereabouts.

14. याज्ञवल्क्य 2. 269.] गृहीतः शङ्कया चौर्ये आत्मानं चेन्न शोधयेत् ।
दापयित्वा हृतं द्रव्यं चौरदण्डेन दण्डयेत् ॥

14. When a person has been arrested for theft, on suspicion,—if he fails to clear himself,—he should be made to restore the stolen goods and be punished like a 'thief.'—(Yājña. 2. 269.)

NOTES

'*Clear himself.*'—By adducing evidence, '*human*'—in the shape of witnesses,—and in their absence, '*divine*'—in the shape of ordeal.—(*Mitākṣarā.*)

When a man has been arrested on suspicion based upon one or other of the grounds, his case should be fully investigated, and he should be given a chance of clearing himself by adducing evidence in his favour.—(*Mitākṣarā.*)

15. नारद 14. 22—26.] गवादिषु प्रणष्टेषु द्रव्येष्वपहृतेषु च ।
पादेनान्वेषणं कुर्युरामूलात् तद्विदो जनाः ॥
ग्रामे व्रजे विवीते वा यत्र तन्निपतेत्पदम् ।
वोढव्यं तद्भवेत्तेन न चेत् सोऽन्यत्र तन्नयेत् ॥
पदे प्रगूढे भग्ने वा विषमत्वज्जनान्तिके ।
यस्त्वासन्नतरो ग्रामो व्रजो वा तत्र पातयेत् ॥
सीमाध्वनि द्वयोर्यत्र स्तेनप्रायोऽशुचिर्जनः ।
पूर्वापराधैर्दृष्टो वा संसृष्टो वा दुरात्मभिः ॥
नैवान्तरीचान्न दिवो न समुद्रान्न चान्यतः ।
दस्यवः सम्प्रयर्तन्ते तस्मादेवं प्रकल्पयेत् ॥

15. When a cow or other animal has been lost, and other property has been taken away, experienced men shall trace it by means of its footprints, proceeding from the place from where it has been stolen ; wherever the footprints go to—whether it be a village or cow-pen or a pasture-ground,—the inhabitants or owners of that place must make good the loss ; unless they can prove that the footprints have gone further on from their place.—Where the footprints are obliterated or broken up, the responsibility shall lie with the nearest village or pasture-ground. Where the footprints stop on the boundary of two villages, that village shall be held responsible for the theft which is found to be inhabited by thieves and dishonest persons, or which has been found to have been charged with a similar crime before, or which is found to be inhabited by wicked persons [or, according to the reading

'*Samā*,' as read by *Aparārka*, p. 841, where two persons are found to have left their footprints on the same road, the crime shall be imputed to that one who has the appearance of a thief and a dishonest person, or who has been previously convicted of similar crimes, or who associates with wicked persons].—Chāṇḍālas, executioners and other such persons, as well as those who are in the habit of roaming about at night shall institute a search in the villages.—(Nārada, 14. 22—26; in *Vivādaratnākara*, p. 835, and in *Aparārka*, p. 841.)

16. मनु 9. 264—267.] सभाप्रपाऽपूपशालावेशमद्यान्नविक्रयाः ।
चतुष्पदाश्चैत्यवृक्षा समाजाः प्रेक्षणानि च ॥
जीर्णोद्यानान्यरण्यानि कारुकावेशनानि च ।
शून्यानि चाप्यगाराणि वनान्युपवनानि च ॥
एवंविधान्नृपो देशान् गुल्मैः स्थावरजङ्गमैः ।
तस्करप्रतिषेधार्थं चारैश्चाप्यनुचारयेत् ॥
तत्सहायैरनुगतैर्नानाकर्मप्रवेदिभिः ।
विद्यादुत्साहयेच्चैव निपुणैःपूर्वतस्करैः ॥

16. Assembly-rooms, water-drinking booths, sweetmeat-shops, brothels, taverns, victualler's shops, cross-roads, trees of worship, festive gatherings and theatres;—old gardens, forests, artisan's shops, uninhabited houses, groves and gardens;—these and similar places the king shall cause to be guarded by companies of soldiers, stationary as well as patrolling, and also by spies,—for the purpose of prevention of theft.—He shall detect and exterminate the thieves by means of clever reclaimed thieves, who associate with them, follow them and thus become apprised of their machinations.—(Manu, 9. 264—267.)

17. नारद] विचित्रैश्चारयेच्चारैश्चौरग्रहणतत्परैः ।
तथा चान्ये प्रणिहिताः श्रद्धेयाश्चित्रवादिनः ॥
चारा ह्युसादयेयुस्तान् तस्करान् पूर्वतस्कराः ।
अर्थदानैर्महादानैः समाजोत्सवदर्शनैः ॥
तथा चौरोपदेशैश्च कुर्युस्तेषां समागमम् ।
तांस्तत्र चौरान् गृह्णीयात् तान् विभाव्याविलम्ब्य च ॥
अवघुष्य च सर्वत्र हन्याच्चित्रवधेन तु ॥

17. The king shall have the thieves traced by several spies expert in catching thieves, and also by other careful and trust-

worthy men. These spies, specially those who are reclaimed thieves, will hunt out the thieves; associating with them through gifts and presents, through advice regarding theft, and through taking them to assemblies and festivals.—When the thieves have been caught they shall be speedily tried, and notified, and various corporal punishments shall be inflicted on them.—(Nārada in *Vivādaratnākara*, p. 337 and *Aparārka*, p. 841.)

18. कात्यायन] अन्यहस्तान् परिभ्रष्टमकामादुद्धृतं भुवि ।
चौरेण वा परिक्षिप्तं लोप्त्रं यत्नात् परीक्षयेत् ॥

18. A man shall not be convicted of theft simply on the ground of his being found in possession of the stolen goods; as it is possible that he may have found it on the road, where it might have been dropped by the thief.—(Kātyāyana in *Vivādaratnākara*, p. 337.)

19. नारद] दस्युवृत्ते यदि नरे शङ्का स्यात् तस्करेऽपि वा ।
यदि स्पृशति लेशेन कार्यः स्याच्छपथस्तथा ॥

19. If a man addicted to stealing is suspected of having committed a theft,—on such slight grounds as the parching of the mouth on being questioned, and so forth,—he should be made to undergo an ordeal.—(Nārada in *Vivādaratnākara*, p. 358.)

NOTES FROM ARTHASHASTRA

Detection of Theft.

(A) Thieves may be arrested—(*a*) on suspicion, (*b*) on the possession of stolen property, and (*c*) in connection with the acts of egress and ingress.

(*a*) The following persons may be arrested 'on suspicion':—one whose hereditary property has been reduced,—one who is without sufficient means of livelihood,—one who is living with an assumed name, *gotra* or habitat,—one who has no ostensible means of livelihood,—one who is very much addicted to meat-eating, wine, perfumes, garlands, clothes and ornaments—or to prostitution, gambling and drinking,—one who is constantly leaving his home,—one who visits unknown places,—one who is in the habit of visiting at unusual times solitary houses, or gardens, or forests,—one who is found to be holding frequent consultations with people in secret places or in places near houses promising a rich booty,—one who is found to be visiting surgeons and getting himself treated secretly for fresh wounds,—one who keeps himself hidden in the innermost rooms of his house,—one who on meeting some one immediately turns back,—one who is addicted to women,—one who

is always making enquiries regarding the ladies and riches of other householders,—one who is practising the use of weapons used in reprehensible work,—one who is in the habit of working secretly under the shadow of walls,—one who sells damaged articles at improper times and places,—one who is in the habit of hiding himself,—one who has previously committed thefts—notorious as a bad character,—one who hides himself from being seen by officers,—one who is always in fear,—one whose voice is hoarse and face pale,—who is frightened at the sight of persons carrying arms,—and one who is known to be a thief or as given to violent acts, or as having a bad livelihood.

(*b*) *Arrest through stolen property.*—When a man's property has been lost or stolen, he shall report it to persons who deal in articles similar to what has been lost or stolen.—If these persons, on getting the article in question, conceal it, they should be held guilty of abetting the theft.—If they have kept it in ignorance, they would be absolved from blame by giving up the articles. People should not sell or pledge old articles without reporting the same to the Superintendent of Trade.—If what has been reported as lost or stolen is found with any person, that person shall be questioned as to where he obtained the article. If the man says—'I have inherited it' or 'I got it from such and such a person,' and describes the habitat of the man from whom he got or bought it, as also its exact size and price, etc., then, his title having been established, he shall be let off.—If the owner of the article also succeeds in establishing his title, then the property should be taken as belonging to that party whose possession may be found to be prior to the other's, or whose witnesses may be more trustworthy.—If the man arrested should say that the article was hired or sold or pledged to him by a certain person,—then that person shall be called, and if he corroborates the statement of the accused, the latter shall be let off.—If the person named denies the transaction, the accused should produce other evidence.—If a man has picked up a thing that has been abandoned or lost or dropped on the way, he clears himself by indicating the time and place where he got it. If he cannot clear himself, he should surrender the thing and also pay a fine equal to the value of the thing. If not, he should be made to suffer the punishment of the 'thief.'

(*c*) *Arrest in connection with ingress and egress.*—If the room in which the theft has occurred is found to have been entered into and got out of by means of a back door,—if the door is broken through at its joints or at its base,—if the entry has been effected through an opening made in the window of an upper room,—if foot-rests have been made in the wall for going up and down,—if what has been stolen was kept in a hidden place and could not be found except by one who knew of the hiding place,—it should be understood that the theft has been committed by an inmate of the house.—Thereupon the officer shall examine such of the inmates as are found to be addicted to vices,—who have friends among wicked people,—as also such women as may have been born in poor families, or who are unchaste,—also such servants as happen to be of bad character or given to too much sleep, with voice hoarse and face pale, who begins to talk much, one whose footprints are found to tally with the marks left in the sand near the scene of the theft, or the odour of whose garlands and perfumes is found to be the same as that found near that place.—In this manner shall the thief or the adventurer be detected.—(*Arthashāstra.* 4. 6.)

Examination of One Accused of Theft

(B) In the presence of the man whose property has been stolen and his relations,—the investigating officer shall question the witness about the habitat, caste, *gotra*, name, profession, property, helpers of the accused.—The answers given on these points he shall examine, and then proceed to question him as to where the accused had spent the day preceding the theft, where he had slept at night, till the time of his arrest. If his movements are satisfactorily explained, he should be acquitted ; otherwise he should be held guilty.—No one shall be arrested on suspicion, after three days have elapsed since the theft, except when the implements of theft are found in his house.—(*Arthashāstra*, 4. 8.)

(C) If a man accuses one of theft, who is found to be not guilty,—he shall be punished like a thief ; as also the man who shelters a thief.—(*Arthashāstra*, 4. 8.)

(D) When a thief accuses another person of theft, the latter clears himself by showing that the charge is due to malice and enmity. If, even after this, the man who has cleared himself is not let off, the accuser shall be fined 250 *Paṇas*.—(*Arthashāstra*, 4. 8.)

(E) When the man has been arrested on suspicion and the suspicion has been confirmed, he shall be questioned regarding the implements used by him, his advisers and helpers, the stolen property and its receivers and other details.—If thus questioned the man fails to answer the question coherently, and goes on talking incoherently, through fear,—he shall be let off as non-guilty. The man shall be punished only after the case has been investigated in all its bearings.—(*Arthashāstra*, 4—8.)

(F) The thief is to be traced through other thieves, unchaste women, men conversant with many dialects, bards, people who may have given him food or shelter.—When his guilt has been established, he should be made to undergo hard labour ;—but he shall not be made to work if his guilt has not been serious, or if he is too young or too old or too ill or intoxicated, or much oppressed with hunger, thirst and fatigue or suffering from indigestion ;—nor will work be taken from pregnant women or from such women as have been newly delivered within a month.—(*Arthashāstra*, 4. 8.)

(G) For women, the punishment shall be only half of what has been prescribed for men ; or a mere reprimand will do.—(*Arthashāstra*, 4. 8.)

PENALTIES FOR OPEN THIEVES AND SWINDLERS

20. याज्ञवल्क्य 2. 244.] मानेन तुलया वापि योंशमष्टमकं हरेत् ।
दण्डं स दाप्यो द्विशतं वृद्धौ हानौ च कल्पितम् ॥

20. If a trader, by means of false measures or scales, abstract the eighth part of the commodity sold, he should be fined 200 *Paṇas* ; the fine to be increased or decreased according as the part abstracted is higher or lower than the eighth.—(Yājña. 2. 244.)

NOTES

'Abstract'—either while selling or while buying.—(*Aparārka.*)

Vivādachintāmaṇi, (p. 125) remarks that the mention of the 'scales' and the 'measures' is only by way of illustration; any and every form of fraud is meant; the meaning being that the trader is to be fined 200 *Paṇas* if, by any trick, he defrauds the other party of the eighth part of the commodity.

21. कात्यायन] तुलामानप्रतीमानप्रतिरूपकलक्षितैः ।
चरन्नलक्षितैर्वापि प्राप्नुयात् पूर्वसाहसम् ॥

21. A trader who deals with false weights or measures or counterfeit, or by other secret means of fraud, he should be fined the first amercement.—(Kātyāyana in *Vivādaratnākara,* p. 295.)

NOTES

This also refers to cases where the eighth part of the commodity has been extracted.—(*Vivādaratnākara,* p. 215.)

22. मनु 9. 287.] समैर्हि विषमं यस्तु चरेद्वै मूल्यतोऽपि वा ।
स प्राप्नुयाद् दमं पूर्वं नरो मध्यममेव वा ॥

22. The man who treats equals as unequals in value should receive the punishment of the lowest or the middle amercement.—(Manu, 9. 287.)

NOTES

'Treats equals as unequals in value.'—In regard to certain substances, it has been ordained that in exchanges they shall be treated as equal, *e.g.,* sesamum and paddy; if then, having advanced a certain quantity of sesamum, a man demands and receives a larger quantity of paddy—or when, in the act of buying and selling, a man buys sesamum at a price lower than that paid for paddy;—or in a case where one man has an upper garment to spare, and another a lower garment,—and the two are of equal value,—and yet, knowing the greater need of the former, the latter offers to him the lower garment, not in equal exchange, but at a higher price, the punishment prescribed are both for the buyer and the seller.—The exact amount of the fine is to be determined by the value of the commodities concerned.—(*Medhātithi.*)

The meaning is somewhat different, according to *Vivādaratnākara* (p. 286):—If a man is found to receive the same price from a number of persons, but the commodity sold to all of them is not of the same quality,—he is

to be fined the lowest amercement.—Or the meaning may be that the fine is to be inflicted if he charges a price higher than what is due.—It quotes *Halāyudha* whose explanation is the same as Medhātithi's, but adds also—'the fine is to be imposed if the seller charges a higher price on finding that the buyer is in great need of the commodity.'

23. मनु 9. 291.] अबीजविक्रयी चैव बीजोत्कृष्टा तथैव च ।
मर्यादाभेदकश्चैव विकृतं प्राप्नुयाद्वमम् ॥

23. If a man sells as 'seed' what is not seed,—or picks out the right seed,—or transgresses the bounds of propriety, he shall suffer mutilation as the penalty.—(Manu, 9. 291.)

NOTES

'*Picks out the right seed.*'—Before selling, the man may pick out all the good seeds and palm off only the bad ones;—or it may mean 'one who picks out the seeds germinating in the field with a view to damage.'—'*Bounds of propriety.*'—rules and practices sanctioned by the scriptures and by usage.—'*Mutilation,*'—cutting off of ears, nose, etc.—(*Medhātithi.*)

'*Maryādābhedakaḥ,*' rendered here as 'one who transgresses the bounds of propriety,' may be taken to mean 'the breaker of dams.'

24. बृहस्पति 22. 7.] प्रच्छन्नदोषं व्यामिश्रं पुनः संस्कृतविक्रयी ।
पण्यं तु द्विगुणं दाप्यो वणिग्दण्डं च तत्समम् ॥

24. A trader, who has concealed the defects of the commodity he has sold,—or has adulterated it, or has sold an old article after repairing it (and palming it off as new),—shall be compelled to give the double quantity to the buyer and to pay a fine equal in amount to the value of the commodity.—(Bṛhaspati, 22. 7; in *Vivādaratnākara*, p. 297.)

25. याज्ञवल्क्य 2. 245.] भेषजस्नेहलवणगन्धधान्यगुडादिषु ।
पण्येषु हीनं क्षिपतः पणा दण्डस्तु षोडश ॥

25. Medicines, oils, salts, scents, grains, molasses and the like,—for adulterating any of these things with inferior stuff,—the fine is 16 *Paṇas*.—(Yājña. 2. 245.)

NOTES

The penalty here prescribed is for the mere adulterating, even though the man may not sell it (says *Mitākṣarā* also); the preceding section has

prescribed the penalty for actually selling adulterated stuff;—hence there is no inconsistency between the two.—(*Vivādaratnākara*, p. 297.)

According to *Vivādachintāmaṇi* (p. 126) the penalty here laid down is in connection with articles of small value, and that laid down in the preceding section is in connection with articles of high value.

26. मनु 8. 400.] शुल्कस्थानं परिहरन् अकाले क्रयविक्रयी ।
मिथ्यावादी च संख्याने दाप्योऽष्टगुणमत्ययम् ॥

26. If a trader evades the custom-house, or if he buys or sells at other than the prescribed times, or if he makes a false declaration regarding quantities,—he should be made to pay eight times the amount evaded.—(Manu, 8. 400.)

27. याज्ञवल्क्य (?)] मिथ्या वदन् परीमाणं शुल्कस्थानादपाक्रमन् ।
दाप्यस्त्वष्टगुणं यश्च सव्याजक्रयविक्रयी ॥

27. If a trader makes a false declaration regarding quantities,— or evades the custom-house,—or buys and sells fraudulently,—he should be made to pay eight times the amount.—(Attributed to Yājña. in *Vivādaratnākara*, p. 298.)

28. विष्णु] शुल्कस्थानमपाक्रामन् सर्वापहारमवाप्नुयात् ।

28. He who evades the custom-house should suffer confiscation of the entire commodity.—(Viṣṇu in *Vivādaratnākara*, p. 298.)

NOTES

The penalty here laid down is for repeated evasions; and that laid down in the preceding section is for the first offence.—(*Vivādaratnākara*, p. 298 and *Vivādachintāmaṇi*, p. 127.)

MAKING AND USING FALSE WEIGHTS AND MEASURES; COUNTERFEIT COINS, ETC.

29. शङ्खलिखित] कूटतुलामानप्रतिमानव्यवहारे शारीरोऽङ्गच्छेदो वा ॥

29. For using false scales, weights and measures—corporeal punishment should be inflicted; also the cutting off of limbs.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 298.)

NOTES

'*Corporeal punishment*'—such as shaving of the head (in the case of minor commodities); —'*cutting off*'—of the ear or nose (in the case of valuable commodities).—(*Vivādaratnākara*, p. 298.)

30. याज्ञवल्क्य 2. 240.] तुलाशासनमानानां कूटकृन्नाणकस्य च ।
एभिश्च व्यवहर्ता यः स दाप्यो दममुत्तमम् ॥

30. One who makes false weighing scales or weights and measures,—one who forges a royal edict,—and he who counterfeits coins,—as also one who makes use of these,—should suffer the highest amercement.—(Yājña. 2. 240.)

NOTES

'*Makes use*'—consciously.—(*Aparārka.*)

'*False*'—different from the standard accepted in the country,—be it higher or lower.—(*Mitākṣarā.*)

31. याज्ञवल्क्य 2. 241] अकूटं कूटकं ब्रूते कूटं यश्चाप्यकूटकम् ।
स नाणकपरीक्षी तु दाप्य उत्तमसाहसम् ॥

31. If a professional coin-tester declares a pure coin to be counterfeit, or a counterfeit to be pure,—he should suffer the highest amercement.—(Yājña. 2. 241.)

NOTES

This penalty refers to cases where the tester is found to have given the false opinion deliberately, through malice or such other motives.—(*Aparārka.*)

32. विष्णु] तुलानाणककूटकर्तुश्च तदकूटवादिनश्च द्रव्याणां प्रतिरूपविक्रायकस्य च सम्भूयवणिजां पण्यमनर्घेणावरुन्धतां प्रत्येकस्य विक्रीणतां च उत्तमसाहसः] ॥

32. He who makes false weighing scales or counterfeits coins,—he who declares these to be false when they are true,—he who sells imitations,—and also those traders who combine to corner a commodity at improper prices—shall suffer the highest amercement.—(Viṣṇu in *Vivādaratnākara*, p. 299, and *Vivādachintāmaṇi*, p. 128.)

QUACKS

33. बृहस्पति 22. 8.] अज्ञातौषधमन्त्रस्तु यश्च व्याधेरतत्त्ववित्।
रोगिभ्योऽर्थं समादत्ते स दण्ड्यश्चौरवद्भिषक ॥

33. If a quack who knows nothing about medicines or incantations, and who is ignorant of the nature of the disease, should obtain money from a sick person (under the pretext of curing him),—he should be punished like a thief.—(Bṛhaspati, 22. 8; in *Vivādaratnākara*, p. 306, and *Aparārka*, p. 824.)

34. याज्ञवल्क्य 2. 242.] भिषङ्मिथ्याचरन् दाप्यस्तिर्यक्षु प्रथमं दमम्।
मानुषे मध्यमं राजमानुषे तूत्तमं दमम् ॥

34. If a physician, behaving dishonestly, undertakes the treatment of animals, he should be fined the first amercement;—in the case of ordinary men, the middle amercement;—and in the case of the king's relatives, the highest amercement.—(Yājña. 2. 242.)

NOTES

'*Behaving dishonestly*'—*i.e.*, posing as a physician, when he knows nothing of the science.—(*Mitākṣarā*);—'acts against the rules of the science' (*Aparārka*.)

NOTES FROM ARTHASHASTRA

(*a*) Those who make false shells or dice, shall have one hand cut off or be fined 400.—For aiding and abetting theft and adultery, a woman shall have her ears and nose cut off, or be fined 500;—for a man the punishment shall be double.—If a man steals a large animal, a slave or a slave-girl,—or sells the covering cloth of a dead body,—his feet shall be cut off, or he shall be fined 600.

(*b*) For striking one's superior with the hand or the foot,—and for riding the king's chariot or horses, etc.,—one hand and one foot shall be cut off,—or a fine of 700 shall be imposed.—If a Shūdra calls himself a Brāhmaṇa,—or steals the property of a temple,—or predicts calamities for the king,—or destroys a man's two eyes,—he shall be blinded, or fined 800.—For letting off a thief or an adulterer,—for adding to, or subtracting from, a royal edict,—or stealing a maiden or slave-girl with gold ornaments,—or dealing in counterfeit articles,—or selling forbidden meat,—his left hand and a foot shall be cut off, or he may be fined 900. For selling human flesh, a man shall suffer death.

Misappropriation by the King's Officers

(*c*) If an officer misappropriates precious gems or other valuable commodities (as sandalwood, etc.) from the royal stores—he shall suffer simple death.—If he misappropriates such ordinary commodities as cotton and the like, he shall be fined 250.—If he misappropriates, from trade-duties paid to the king, any amount between one and four *māṣas*, he shall be fined 12 *Paṇas* ;—between 4 and 8 *māṣas*, 24 *Paṇas*;—between 5 and 12 *māṣas*, 36 *Paṇas* ;—between 12 *māṣas*, and 1 *Paṇa*, 48 *Paṇas* ;—between 1 and 2 *Paṇas*, 250 *Paṇas* ;— between 2 and 4 *Paṇas*, 500 *Paṇas* ;—between 4 and 8 *Paṇas*, 1,000 *Paṇas* ; between 8 and 10 *Paṇas*, death.—These same penalties and on the same scale apply also to cases of misappropriation from the various royal stores. – If the king's officer, after having done the misappropriation, reports to the king that the things have been stolen, he shall suffer various forms of painful death.—(*Arthashāstra*, 4. 9.) If an officer of the king secretly takes away during the day from the field, the threshing yard, the house or the shop, of the people, things of the value of between 1 and 4 *māṣas*, he shall be fined 3 *Paṇas* ;—or his body shall be smeared with cowdung and he shall be paraded in the streets;—of value up to 8 *māṣas*, 6 *Paṇās* ; or his body shall be smeared with cowdung, ashes and he shall be paraded in the streets;—of value up to 12 *māṣas*, 9 *Paṇas*, or paraded as before, or with a string of earthenware cups round his neck ;– of the value up to 2 *Paṇas*, 12 *Paṇas*, or banishment after shaving ; – of value up to 9 *Paṇas*, 24 *Paṇas*, or his head to be shaved and he shall be turned out with brick-bats ;—of the value up to 4 *Paṇas*, 36 *Paṇas* ;—of the value up to 5 *Paṇas*, 480 *Paṇas*; of the value up to 13 *Paṇas*, 250 *Paṇas*,—of the value up to 20 *Paṇas*, 300 *Paṇas* ;—of the value up to 30 *Paṇas*, 500 *Paṇas*,—of the value up to 40 *Paṇas*, 1,000 *Paṇas* of the value up to 50 *Paṇas*, death.—(*Arthashāstra*, 4. 9.)

(*d*) During the day or night, if he takes away by force,—between two watches—the punishment shall be double of that prescribed above ; - if he has done it fully armed, the punishment shall be quadruple.—(*Arthashāstra*, 4. 9.)

(*e*) If a householder forges a royal edict or seal or any other document, he shall be fined 250 ;—if a royal store-keeper does it, he shall be fined 500 ;—if the man in charge of a village does it, he shall be fined 1,000 ;—if the Royal Collector does it, he shall suffer death. -(*Arthashāstra*, 4. 9.)

(*f*) If a Judge threatens, or chides or turns out a litigant, or receives presents from him, he shall be fined 250. Double of this, if he abuses him.—If he does not examine the witness who should be examined, and examines one who should not be examined ; – or after putting him a question, allows him to go without answering it,— or tutors him, or reminds him, or prompts him,—he shall be fined 500.—If he does not question an essential witness, and questions one who is not essential,—or decides cases without examining witnesses,—or if, by casuistry, he perverts a witness,—or if, by taking a long time over it, he tires the witness and makes him contradict himself,—if he dismisses as irrelevant what is quite relevant,—or helps the witness,—or takes up for reconsideration cases already decided,—he shall be fined 1,000. If these offences are repeated, the fine shall be double.—(*Arthashāstra*, 4. 9.)

(g) If the recorder of evidence omits to write what has been said, and writes down what has not been said,—or alters a statement when recording it,—or alters the findings,—he shall be fined 250, or according to the gravity of the offence.—(*Arthashāstra*, 4. 9.)

(h) If a judge fines one who should not be fined,—he shall be fined double the amount of the fine that he had imposed.—If he inflicts a punishment which is higher or lower than the right one,—he shall be fined eight times the amount of that punishment.—If he wrongly inflicts corporal punishment, he shall himself suffer corporal punishment; or a fine which shall be double the amount that has been prescribed as an alternative to the corporal punishment imposed by him.—If he prevents justice, he shall be fined eight times the amount involved.—(*Arthashāstra*, 4. 9.)

(i) If a prison-officer permits a prisoner to go out of the lock-up or the prison to which he has been consigned by the judge,—or permits the bringing in of foods and beds and seats for the prisoners,—he shall be fined 3 *Paṇas* and upwards.—If he permits a prisoner to escape from the lock-up, he shall be fined 500 *Paṇas*, and shall be made to pay what may be due from the accused;—if he allows a prisoner to escape from the prison, his entire property shall be confiscated and he shall be put to death.—(*Arthashāstra*, 4. 9.)

(j) If a jailer, without permission, moves the prisoner from one place to another, he shall be fined 24 *Paṇas*;—if he makes him work, without orders, 48 *Paṇas*;—if he takes him to another place, or stops his food or drink, 96 *Paṇas*;—if he tortures him or demands bribes from him, 500 *Paṇas*;—if he strikes him, 1,000 *Paṇas*.—(*Arthashāstra*, 4. 9.)

(k) If a man helps a prisoner to escape from the lock-up, without breaking through its walls,—he shall be fined 500;—if he does it by breaking through the wall, he shall suffer death. If he helps him to escape from the prison, his entire property shall be confiscated and he shall be put to death.—(*Arthashāstra*, 4. 9.)

35. विष्णु] उत्तमं साहसं दण्ड्यो भिषङ् मिथ्याचरन् उत्तमेषु पुरुषेषु मध्यमेषु मध्यमम्, तिर्यक्षु प्रथमम् ॥

35. A physician acting dishonestly towards persons of high class, should be fined the highest amercement; towards men of the middle class, the middle amercement; towards animals, the lowest amercement.—(Viṣṇu in *Vivādaratnākara*, p. 306; and in *Aparārka*, p. 824.)

NOTES

If a physician knows a case to be hopeless and yet without communicating this fact, undertakes the treatment of the patient,—and the patient dies, the physician should be fined 250 *Paṇas*.—If the death is due to some act of the physician himself, 500 *Paṇas*.—If he commits a mistake in operating up part of the body, he shall be convicted under the appropriate section of (*Arthashāstra*, 4. 1)

36. बृहस्पति 22.10.] अन्यायवादिनः सभ्यास्तथैवोत्कोचजीविनः ।
विश्रब्धवञ्चकाश्चैव निर्वास्याः सर्वे एव ते ॥

36. Judges passing unjust sentences, those who live by taking bribes, and 'confidence-betrayers,'—all these should be banished.—(Bṛhaspati, 22. 10; in *Vivādaratnākara*, p. 307.)

NOTES

'*Confidence-betrayers.*'—This term has been given a technical significance and applied by Vyāsa to 'prostitutes, gamesters and artisans.'—'*Those who live by taking bribes*'—These also have been defined by Vyāsa in *Vivādaratnākara* (p. 307) as 'Persons appointed as judges, who, on receiving money, deliver wrong judgments under that influence.'

37. याज्ञवल्क्य] उत्कोचजीविनो द्रव्यहीनान् कृत्वा प्रवासयेत् ।

37. Those who live by taking bribes, the king shall banish after confiscating their entire property.—(Yājña. in *Vivādaratnākara*, p. 307.)

NOTES

Acrobats and actors and dancers shall not stay in one place for more than three days; and shall not receive excessive rewards from the people; if they do, they shall be fined 12 *Paṇas*.—(*Arthashāstra*, 4. 1.)

GAMESTERS

38. नारद] कूटाक्षदेविनः पापान् निर्हरेद् द्यूतमण्डलात् ।
कण्ठेऽक्षमालामासज्य ॥

38. Those who play with false dice, the king shall turn out from the Gaming House, after tying a string of beads to their necks.—(Nārada in *Vivādaratnākara*, p. 307.)

39. बृहस्पति] ग्लहः प्रकाशः कर्तव्यो निर्वास्याः कूटदेविनः ।

39. Staking should always be open; and cheaters at gambling should be banished.—(Bṛhaspati in *Vivādaratnākara*, p. 307.)

40. बृहस्पति 22. 9.] कूटाक्षदेविनः क्षुद्राः राजद्रव्यापहारकाः ।
गणानां वञ्चकाश्चैव दण्ड्यास्ते कितवाः स्मृताः ॥

40. Gamblers playing meanly with false dice, those who misappropriate royal property, and those who cheat corporations, should be banished.—(Bṛhaspati, 22. 9; in *Vivādaratnākara*, p. 308.)

41. याज्ञवल्क्य (?)] राज्ञा सचिह्नं निर्वास्याः कूटाक्षोपधिदेविनः ॥

41. The king shall banish those who play with false dice and cheat at gambling.—(Yājña. in *Vivādaratnākara*, p. 308.)

42. विष्णु] कूटाक्षदेविनां करच्छेदः । उपधिदेविनां सन्दंशच्छेदः ॥

42. Those who gamble with false dice should have their hands cut off;— those who cheat at gambling should have their fore-finger and thumb cut off.—(Viṣṇu in *Vivādaratnākara*, p. 308.)

FORTUNE-TELLERS

43. बृहस्पति 22.11-12.] ज्योतिर्ज्ञानं तथोत्पातमविदित्वा च ये नृणाम् ।
श्रावयन्त्यर्थलोभेन विनेयास्तेऽपि यत्नतः ॥
दण्डाजिनादिना युक्तमात्मानं दर्शयन्ति ये ।
हिंसन्ति छद्मना नॄणां वध्यास्ते राजपूरुषैः ॥

43. Those who, without knowing Astronomy or the science of Portents, expound them to the people, through avarice, shall be punished.

Those who show themselves in public wearing a staff, a skin and other insignia of religious orders,—and injure mankind by deceiving them, shall be punished corporeally by the king's officers.—(Bṛhaspati, 22. 11-12; in *Vivādaratnākara*, p. 308.)

GOLDSMITH, ETC.

44. मनु 9. 292.] सर्वकण्टकपापिष्ठं हेमकारं तु पार्थिवः ।
प्रवर्तमानमन्याये छेदयेल्लवशः क्षुरैः ॥

44. If the goldsmith, the worst of criminals, acts dishonestly,—the king shall have him cut to pieces with razors.—(Manu, 9. 292.)

NOTES

Considerations of the quantity stolen, or the cost of the owner, do not enter into this case; repetition alone has to be taken into consideration: in the case of the first offence, a fine shall be substituted for the slicing of the flesh.—(*Medhātithi.*)

The penalty here prescribed pertains to repeated offence.—(*Vivādaratnākara*, p. 309, and *Vivādachintāmaṇi*, p. 131.)

45. कात्यायन] कूटस्वर्णव्यवहारी विमांसस्य च विक्रयी ।
त्र्यङ्गहीनाश्च कर्तव्या दाप्यास्तूत्तमसाहसम् ॥

45. He who deals fraudulently with gold and he who sells wrong meat should have their three limbs cut off and be made to pay the highest amercement.—(Kātyāyana in *Vivādaratnākara*, p. 309; and *Vivādachintāmaṇi*, p. 131, which latter attributes it to Yājña.)

NOTES

'*Three limbs*'—Nose, teeth and hand.—'*Deals fraudulently with gold*'—*i.e.*, alters its colour by chemical treatment.—(*Vivādaratnākara*, p. 309.); transforms base metals into gold and palm them off as real gold—(*Vivādachintāmaṇi*, p. 131).—'*Selling wrong meat*'—*i.e.*, selling, as deer-flesh, the flesh of other animals.—(*Vivādachintāmaṇi*, p. 131.)

NOTES FROM ARTHASHASTRA

(*a*) Persons purchasing gold or silver ornaments from suspicious persons, without consulting the goldsmith, shall be fined 12 *Paṇas*;—those purchasing unwrought gold and silver, 28 *Paṇas*;—those purchasing them from thieves, 48 *Paṇas*; those who purchase, at a very low price, and secretly such gold and silver articles as have been melted down, shall be punished like a 'thief.'—(*Arthashāstra*, 4. 1.)

(*b*) If a goldsmith steals a *māṣa* of gold out of a '*Suvarṇa*' of gold, he should be fined 200;—if he steals a *māṣa* out of a '*Dharaṇa*' of silver, he shall be fined 12 *Paṇas*.—(*Arthashāstra*, 4. 1.)

(*c*) For imparting an artificial colouring to articles of inferior colour, the fine shall be 500; as also for mixing of superior article with inferior ones.—(*Arthashāstra* 4. 1.)

(*d*) For making an article out of a '*Dharaṇa*' of silver, the wages would be a *māṣa*; for making an article of gold, the wages shall be the eighth part of a *māṣa* of gold;—in each case, higher wages being paid for more artistic work.—For making articles of copper, brass and such metals, the wages would be 5 per cent.—A piece of crude copper loses its tenth part in the process of manufacture; if the shortage in weight is more than this, the man shall be

fined double the value of the shortage.—Lead and zinc lose the twentieth part in the process of manufacture ; the wages of working of these, is a shell for each *Pala.*—Iron loses the fifth part in the process of manufacture ; the wages for working it up are 2 shells for each *Pala.*—(*Arthashāstra*, 4. 1.)

(*e*) If a coin-tester pronounces a false coin to be true, or a true one to be false, he shall be fined 12 *Paṇas.*—(*Arthashāstra*, 4. 1.)

(*f*) If one makes counterfeit coins, or gets them made, or accepts them, or puts them into circulation,—he shall be fined 1,000.—If he mixes them up with true coins, he shall be put to death.—(*Arthashāstra*, 4. 1.)

(*g*) Those who clear off precious stones of dirt, should obtain one-third part of the earnings of the entire process, and two-thirds, along with the gem itself should go to the king.—If some one steals the gem, he shall be fined 1,000.—(*Arthashāstra*, 4. 1.)

(*h*) For reporting the existence of mines to the king, the reporter should obtain the sixth part of the produce of those mines ; if the reporting is done by one who is paid for this sort of work, he shall get the twelfth part of the produce.—(*Arthashāstra* 4. 1.)

46. याज्ञवल्क्य 2. 246.] मृच्चर्ममणिसूत्रायःकाष्ठवल्कलवाससाम् ।
अजातौ जातिकरणे विक्रयेऽष्टगुणो दमः ॥

46. When clay, skin, precious stones, yarn, iron, wood, tree-bark or cloth,—which is not of good quality,—is made to appear as of good quality,—the fine imposed should be eight times the price obtained by the sale.—(Yajña. 2. 246.)

NOTES

Examples—(*a*) Black clay, touched with musk, sold as musk ;—(*b*) the skin of an ordinary animal, being altered in colour, is palmed off as that of the tiger ;—(*c*) a piece of rock-crystal, coloured red, is sold as ruby ;—(*d*) cotton-yarn, treated in some ways, is palmed off as silk ;—(*e*) Iron, by change of colour, is sold as silver ;—(*f*) a piece of ordinary wood, touched with sandal-scent, is sold as sandalwood ; and so forth.—(*Vivādaratnākara*, p. 309.)

47. याज्ञवल्क्य 2. 247-48.] समुद्रपरिवर्त्तं च सारभाण्डं च कृत्रिमम् ।
आधानं विक्रयं वापि नयतो दण्डकल्पना ॥
भिन्ने पणे तु पञ्चाशत् पणे तु शतमुच्यते ।
द्विपणे द्विशतो दण्डो मूल्यवृद्धौ तु वृद्धिमान् ॥

47. If a man pledges or sells either a covered article after having altered it, or an ordinary commodity after having artificially made it appear as a valuable article,—he shall be punished as follows :—if the value of the article pledged or sold is less than a *Paṇa*, there shall be a fine of 50 *Paṇas* ;—if it is full one *Paṇa*, the fine shall be 100 *Paṇas* ;—if it is

Paṇas, the fine shall be 200 *Paṇas* ;—the amount of the fine being increased in proportion to the price of the article concerned.—(Yājña. 2. 247-248.)

NOTES

'*Altering.*'—The man shows to the other party one thing, but delivers to him something totally different, and of inferior quality, *e.g.*, having shown a sealed packet of pearls, delivers a packet containing pebbles.—'*Artificially made, etc.*,'—*i.e.*, musk or some such valuable article prepared artificially and palmed off as the real thing.—(*Mitākṣarā.*)

48. बृहस्पति 22. 13.] अल्पमूल्यं तु संस्कृत्य नयन्ति बहुमूल्यताम् ।
स्त्रीबालकान् वञ्चयन्ति दण्ड्या अर्थानुसारतः ॥

48. Those who artificially make articles of small value to appear as of higher value and cheat women and children shall be punished in proportion to the price obtained by them.—(Bṛhaspati, 22. 13 ; in *Vivādaratnākara*, p. 310.)

49. बृहस्पति 22. 14.] हेममुक्ताप्रवालाद्यं कुर्वते कृत्रिमं तु ये ।
क्रेत्रे मूल्यं प्रदाप्यास्ते राज्ञे च द्विगुणं दमम् ॥

49. Those who make and sell false gold or fictitious pearls and corals shall be compelled to restore the price to the purchaser, and to pay double the amount as fine to the king.—(Bṛhaspati, 22. 14.)

50. मनु 8. 397.] तन्तुवायो दशपलं दद्यादेकपलाधिकम् ।
अतोऽन्यथा वर्तमानो दाप्यो द्वादशकं दमम् ॥

50. When the weaver weaves a cloth with 10 *Palas* of yarn given to him, the cloth woven of that yarn should weigh 11 *Palas* ; if what he delivers is less in weight, he should be fined 12 *Paṇas*.—(Manu, 8. 397 ; also *Arthashāstra*, 4. 1, according to which the fine should be double the shortage.)

NOTES

The excess varies in different kinds of yarn : says Yājñavalkya (2. 179).—'In the case of wools, the excess should be 10 per cent ; so also in that case of coarse cotton ; in that of cotton-yarn of the middle count, 5 p.c. ; in that of cotton-yarn of the finer count, 2 p.c. But according to Nārada, in both cotton and wool of the coarse count the excess is 10 p.c., 5 p.c. in those of the middle count and 3 p.c., in those of the finer count. When a goldsmith has made orna-

ments and other articles of gold or other valuable metal made over to him by the owner,—if he claims, as wastage in course of the making, a quantity that is more than the recognised proportion, - he shall be punished.—(*Vivādaratnākara*, p 311, and *Vivādachintāmaṇi*, p. 133.)

When metals are made over to the goldsmith for making ornaments, etc., there is a certain amount of wastage in the process; the exact proportion of such wastage is 'recognised' and precisely ordained, *e.g.*, in gold, there is no wastage; in silver, it is 2 per cent; in lead and zinc, 8 per cent; in copper, 5 per cent; and in iron, 10 per cent; according to Yājña. (2. 178) and also Nārada, the latter however saying that in the case of iron, there is no fixed percentage.

NOTES FROM ARTHASHASTRA

(*a*) The wages for weaving shall be the same as the value of the yarns, in the case of cotton;—one and half times the value, in the case of linen and silk;—and double that value in the case of woollens.—(*Arthashāstra*, 4. 1.)

(*b*) If the cloth woven is shorter than the size ordered, the wages shall be reduced in proportion to the shortage of the size;—if it is less in weight, the weaver shall be fined four times the shortage; - if the yarns are changed, the weaver shall be fined double the value.—In the case of woollens, a shortage of 5 per cent in the weight is allowed.—(*Arthashāstra*, 4. 1.)

51. याज्ञवल्क्य 2. 181.] देशं कालं च भोगं च ज्ञात्वा नष्टे बलाबलम् ।
द्रव्याणां कुशला ब्रूयुर्यत्तद्दाप्या असंशयम् ॥

51. If anything is lost in the process of manufacture, the manufacturer shall pay such compensation as may be determined by persons expert in the business, after due consideration of the time, the place and the likely use of the thing.—(Yājñā. 2. 181.)

52. याज्ञवल्क्य 2. 238.] वसानस्त्रीन् पणान् दाप्यो नेजकस्तु परांशुकम् ।
विक्रयावक्रयाधानयाचितेषु पणान् दश ॥

52. The washerman who wears the clothes given to him to wash shall pay a fine of 3 *Paṇas*; if he sells, or hires out, or pledges them, the fine shall be 10 *Paṇas*.—(Yājña. 2. 238.)

53. नारद] मूलाष्टभागो हीयेत सकृद्धौतस्य वाससः ।
द्विःपादस्त्रिस्त्रिभागस्तु चतुःकृत्वार्धमेव तु ॥
अर्धक्षयात्तु परतः पादांशापचयः क्रमात् ।
यावत् क्षीणदशं वस्त्रं जीर्णस्यानियमः क्षये ॥

54. In regard to the deterioration of the texture of the cloth in the process of washing, and the consequent compensa-

tion payable by the washerman,—it should be borne in mind that (*a*) by a single washing, the cloth loses an eighth part of its value, by two washings, it loses a quarter of its value ;— by four washings, it loses half, and so on ; and the amount to be paid as compensation should be fixed accordingly.— (Nārada in *Vivādaratnākara*, p. 314.)

NOTES

If the cloth given to wash was worth 8 *Paṇas*, the compensation shall be (*a*) 7 *Paṇas*, (*b*) 6 *Paṇas* and (*c*) 4 *Paṇās* respectively, in the above cases.—(*Vivādaratnākara*, p. 314.)

NOTES FROM ARTHASHASTRA

(*a*) Washermen shall wash clothes on smooth wooden or stone slabs.—If they wash them elsewhere, they shall make good any damage that may be done to the clothes, and pay a fine of 6 *Paṇas*.—If he sells or pledges other people's clothes, he shall be fined 12 *Paṇas*.—If he wears any clothes except those marked with the sign of a bludgeon, he shall pay a fine of 3 *Paṇas*.—If he changes a cloth, he shall restore the cloth and pay a fine double the price of the cloth.—(*Arthashāstra*, 4. 1.)

(*b*) If a cloth given to the washerman is desired to be as clean as a mirror, he should deliver it in one day ; if it is desired to be as clean as a stone-slab, he should deliver it in two days ; if it is meant to be as white as bleached yarn, in three days ; and if it is desired to be bright white, in four days.—If a cloth given for colouring is meant to be of faint colour, he should deliver it in five days ; if it is meant to be blue or red, in six days ; if it is meant to be coloured very artistically and carefully and neatly, then it shall be delivered in seven days. If they delay longer, they lose their wages.—(*Arthashāstra*, 4. 1.)

(*c*) When there is a dispute regarding the exact shade of the colouring, trustworthy experts are to decide the matter,—for the better kind of colouring the proper wage would be a *Paṇa*; for colours of middling quality, half a *Paṇa*; for colours of the lowest kind, a quarter *Paṇa*.—(*Arthashāstra*, 4. 1.)

(*d*) The wages for washing coarse cloth should be one or two *māṣas* ; for washing red cloth, double of that.—(*Arthashāstra*, 4. 4.)

(*e*) By the first washing, a cloth loses a fourth part of its value ; by the second washing, it loses a fifth part of its value of the first washing and so on.—(*Arthashāstra*, 4. 1.)

54. व्यास] नैगमाद्या भूरिधनाः दण्ड्या दोषानुरूपतः ।

54. Fraudulent traders and others who have made much money (by dishonest means) should be punished in accordance with their crime.—(Vyāsa in *Vivādaratnākara*, p. 315 and in *Smṛtichandrikā*, p. 736.)

55. मनु 8. 193.] उपधाभिश्च यः कश्चित् परद्रव्यं हरेन्नरः ।
ससहायः स हन्तव्यः प्रकाशं विविधैर्वधैः ॥

55. The man who appropriates, by fraudulent means, the property of another person, should be punished publicly, along with his accomplishes, with various modes of death.—(Manu, 8. 193.)

56. याज्ञवल्क्य 2. 249.] सम्भूय कुर्वतामर्घं सम्बाधं कारुशिल्पिनाम् ।
अर्घस्य ह्रासे वृद्धौ वा साहस्रो दण्ड उच्यते ॥

56. If traders combine to bring about a rise or a fall in the prices fixed by the king, and to maintain a price prejudicial to the interests of artisans and artists, they should be fined a thousand *Paṇas.*—(Yājña. 2. 249.)

NOTES

The above is the rendering of Yājñavalkya's text according to the interpretation of *Aparārka* and *Vivādaratnākara* (p. 300); according to *Mitākṣarā*, it would be somewhat different: 'If traders, though cognisant of the authorised rise and fall in prices, combine to maintain a price prejudicial, etc., etc.'—The grammatical construction of the text does not favour this latter interpretation.

57. बृहस्पति 22. 15.] मध्यस्था वञ्चयन्त्येकं स्नेहलोभादिना यदा ।
साक्षिणश्चान्यथा ब्रूयुर्दाप्यास्ते द्विगुणं दमम् ॥

57. Arbitrators who cheat either party, from partiality, avarice or such other motives,—and witnesses who give false evidence,—shall pay as fine twice the amount involved.—(Bṛhaspati, 22. 15, in *Vivādaratnākara,* p. 314.)

58. बृहस्पति 22.16.] मन्त्रौषधिबलात् किञ्चित् यावन्ति वञ्चयन्ति ये ।
मूलकर्म च कुर्वन्ति निर्वास्यास्ते महीभुजा ॥

58. Those who, through spells or medicines, defraud people of money shall be compelled to pay double the amount of what they have got.—Those who practise witchcraft against any person, shall be banished by the king.—(Bṛhaspati, 22. 16, in *Vivādaratnākara,* p. 315.)

F. 56

59. मनु 9. 225.] कितवान् कुशीलवान्क्रूरान् पाखण्डस्थांश्च मानवान् ॥
विकर्मस्थान् शौण्डिकांश्च क्षिप्रं निर्वासयेत् पुरात् ॥

59. Gamblers, dancers, cruel men, men belonging to heretical sects, men addicted to evil deeds, dealers in wine,—all these are 'secret' thieves, and should be banished from the kingdom.—(Manu, 9. 225.)

60. याज्ञवल्क्य 2. 250.] सम्भूय वणिजां पण्यमनर्घेणोपरुन्धताम् ।
विक्रीणतामभिहितो दण्ड उत्तमसाहसः ॥

60. Those traders who combine to hamper the sale of commodities brought in by foreign traders,—by selling up at an improper (unauthorised) price,—and also those who sell things at improper (unauthorised) prices—should suffer the first amercement.—(Yājña. 2. 250.)

NOTES

This refers to cases where the traders, not minding the prices fixed for imported goods by the king, combine to sell them at higher prices with a view to render them unpopular and thereby hamper their clearance,—and those who, with a view to clear their own stock, sell their commodities at prices lower than those fixed by the king.—(*Aparārka.*)

61. मनु 8. 399.] राज्ञः प्रख्यातभाण्डानि प्रतिषिद्धानि यानि च ।
तानि निर्हरतो लोभात् सावहारं हरेन्नृपः ॥

61. A trader who, through greed, exports such commodities as have been proclaimed to be the monopoly of the state, or have been forbidden,—shall have all his property confiscated.—(Manu, 8. 399.)

NOTES

This punishment is meant for one who does the exporting with a view to profiteering; if the articles are carried for being presented to a foreign king, the punishment shall be severer.—(*Medhātithi.*)

'*Forbidden*'—Specially valuable products of the country, which are not allowed to go out.—'*Property*—' *i.e.*, all the profit that he may have made by the forbidden trade.—(*Vivādaratnākara*, p. 300.)

62. शङ्खलिखित] प्रतिषिद्धभाण्डनिर्हारे [शारीरोऽङ्गच्छेदो वा]।

62. If a trader sells an interdicted commodity, he shall suffer corporeal punishment, or have his limbs cut off.—(Shaṅkha-Likhita, in *Vivādaratnākara*, p. 301.)

TRADE-REGULATIONS, THE INFRINGEMENT WHEREOF RENDERS A TRADER LIABLE TO BE TREATED AS AN 'OPEN THIEF'

63. मनु 8. 401-403.] आगमं निर्गमं स्थानं तथा वृद्धिक्षयावुभौ ।
विचार्य सर्वपण्यानां कारयेत् क्रयविक्रयौ ॥
पञ्चरात्रे पञ्चरात्रे पक्षे पक्षेऽथवा गते ।
कुर्वीत चैषां प्रत्यक्षमर्घसंस्थापनं नृपः ॥
तुलामानं प्रतीमानं सर्वं तत् स्यात् सुलक्षितम् ।
षट्सु षट्सु च मासेषु पुनरेव परीक्षयेत् ॥

63. The king shall regulate the purchase and sale of all marketable commodities after having taken into consideration their source, destination and detention, as also profit and loss.—After the lapse of every five days—or a fortnight—the king shall publicly fix the prices of things ;—scales, weights and measures should be duly marked, and they should be re-examined after every six months.—(Manu, 8.401—403.)

4. शङ्खलिखित] तुलामानप्रतीमानव्यवहारार्घसंस्थापनं देशद्रव्यानुरूपं प्रत्ययितपुरुषाधिष्ठितम् [राज्ञा कार्यम्]।

64. Scales, weights and measures, also the prices of things shall be fixed by the king, through trustworthy officers.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 302.)

65. याज्ञवल्क्य 2. 251-253.] राजभिः स्थापितो योऽर्घः प्रत्यहं तेन विक्रयः।
क्रयोऽपि निस्रवस्तस्मात् वणिजां लाभकः स्मृतः ॥
स्वदेशपण्ये तु शतं वणिग् गृह्णाति पञ्चकम् ।
दशकं पारदेशे तु यः सद्यः क्रयविक्रयी ॥
पण्यस्योपरि संस्थाप्य व्ययं पण्यसमुद्भवम् ।
अर्घोऽनुग्राहकः कार्यः क्रेतुर्विक्रेतुरेव च ॥

65. Sales and purchases should be conducted at prices fixed by the king ; the profit made thus alone is legal.—On

products of one's own country, the trader shall take a profit of 5 per cent and 10 per cent on foreign products.—Adding the incidental charges to the price of the commodity, the king shall fix a price which shall be equitable to both the buyer and the seller.—(Yājña. 2. 251—253.)

66. गौतम] पण्यं वणिग्भिरर्घापचये न देयम् ॥

66. If there is a fall in the price, the traders may not pay the royal duty. -(Gautama in *Vivādaratnākara*, p. 303.)

67. वसिष्ठ] अधिष्ठानान्निर्हारः सार्थानामर्घमानमानमूल्यमात्रं नैर्हारिकं स्यात् महामहयोस्त्वनत्ययः स्यादभयं च ॥

67. When commodities are imported from their source, the importers shall pay duty in accordance with the value of the commodities; but duty may be withheld if the articles imported are in connection with royal festivities.—(Vashiṣṭha in *Vivādaratnākara*, p. 303.)

68. विष्णु] स्वदेशपण्याच्छुल्कं दशममादद्यात् परदेशपण्याच्च विंशतितमम् ।

68. On commodities bought and sold within his own realm, the king shall take the tenth part of the profit; on those bought in a foreign land and sold in his own realm, he shall take the twentieth part of the profit.—(Viṣṇu in *Vivādaratnākara*, p. 304 and *Vivādachintāmaṇi*, p. 129.)

69. मनु 8. 398.] शुल्कस्थानेषु कुशलाः सर्वपण्यविचक्षणाः ।
कुर्युरर्घं यथापण्यं ततो विंशं नृपो हरेत् ॥

69. The king shall take one-twentieth of the price of saleable commodities, as fixed by men who have experience of custom-houses and are experts in all kinds of merchandise.—(Manu, 8. 398.)

NOTES

This refers to merchandise bought from foreign lands—says *Vivādaratnākara*, p. 304.

70. गौतम] विंशतिभागः शुल्कः पण्ये । मूलपुष्पौषधं मधुमांसतृणेन्धनानां षाष्टं तद्रक्षणधर्मित्वात् तेषु नित्ययुक्तः स्यात् ।

70. On all merchandise the twentieth part is the duty; on roots, flowers, medicines, honey, meat, grass, fuel and grains, it is the sixtieth part.—(Gautama in *Vivādaratnākara*, p. 304 and *Vivādachintāmaṇi*, p. 129.)

Notes

The '*twentieth part*' is in reference to commodities brought in from foreign lands; - says *Vivādaratnākara*, p. (304).—*Vivādachintāmaṇi* (p. 129) says the same with regard to the 'roots' and the rest also.

71. बौधायन] सामुद्रः शुल्कः—वरं रूपमुद्धृत्य शतपणमूल्ये दशपणम् ।

71. As duty on goods imported by sea, the king shall pick out the best of the lot, and on the rest, take a duty of ten per cent.—(Baudhāyana in *Vivādaratnākara*, p. 305.)

72. वशिष्ठ] न भिक्षकार्षापणमस्ति शुल्कं न शिल्पवृत्तौ न शिशौ न दूते ।
न भैक्षलब्धे न कृतावशेषे न श्रोत्रिये न प्रव्रजिते न यज्ञे ॥

72. There is no duty on articles whose value is less than one *Paṇa*; nor on profits made by an artist; nor on young ones (of cow and other animals sold); nor on things belonging to an ambassador; nor on what is obtained in alms: nor on the remnant of commodities sold; nor from the Vedic scholar or the Renunciate; nor on articles got from sacrificial performances.—(Vashiṣṭha in *Vivādaratnākara*, p. 305 and *Vivādachintāmaṇi*, p. 130.)

Notes from Arthashāstra

The Superintendent of Commerce shall regulate the import and sale of merchandise in the stores;—he shall examine the scales, weights and measures. As regards weights, a difference of one *Pala* this way or that need not count.—If the difference is more than that, it involves a fine of 12 *Paṇas*.—As regards the scales, a difference of one '*Karṣa*' does not count; if the difference is more than that, it involves a fine of 6 *Paṇas*.—As regards measures, a difference of one '*Karṣa*' does not count; if the difference is more than that, it involves a fine of 3 *Paṇas*.—(*Arthashāstra*, 4. 2.)

If a trader has bought the commodities with heavier weights and measures, and sells them with lighter ones, the above fines shall be doubled.—(*Arthashāstra*, 4. 2).

In the case of commodities sold by the number, if the vendor dishonestly extracts what could be obtained for a *Paṇa*—he shall be fined 96 *Paṇas*.—(*Arthashāstra*, 4. 2.)

In the case of articles of wood or metal or precious stones, - or of ropes, leather or clay, - or of thread, tree-bark or wool, - if a man sells or pledges inferior articles representing them as superior, - he shall be fined eight times the price received.—(*Arthashāstra*, 4. 2.)

For fraudulent sale—representing what is not precious to be precious, — what has not actually been imported from a certain country, as so imported,— or showing the articles in one casket and then exchanging it for another casket containing inferior articles,—the fine shall be 54 *Paṇas*.—(*Arthashāstra*, 4. 2.)

When a manufacturer has been ordered to make an article of a certain design and finish,—if his co-partners in trade prevail upon him not to do it ; - or if traders combine to interfere with free trade, —the fine shall be 1000.—(*Arthashāstra*, 4. 2.)

If the man who is weighing or measuring a commodity, with a trick of his hands defrauds the customer of the eighth part of his due, —he shall be fined 200.—(*Arthashāstra*, 4. 20.)

In the case of grains, oils, salts, perfumes and medicinal substances,—if the trader adulterates them with other things of the same colour,—he shall be fined 12 *Paṇas*.—(*Arthashāstra*, 4. 2.)

The trader shall stock only such things as have been assigned to him for doing business in, —regularly entering each day's addition in his books ; and they shall increase their stock only with the permission of the Trade-Superintendent.—If they stock more than that, it shall be confiscated by that officer.—(*Arthashāstra*, 4. 2.)

In the case of the products of the country itself, the Superintendent shall fix the profit at 5 per cent ; 10 per cent in the case of foreign goods. - If a trader charges prices higher than those fixed, he shall be fined at the rate of 200 *Paṇas* for every 5 per cent that he charges beyond the fixed price. — (*Arthashāstra*, 4. 2.)

If a number of traders combining together purchase a large stock, which they are unable to dispose of, - the Superintendent shall not again permit them to make such large purchases ; and if there be a chance of the surplus commodity being spoilt, the Superintendent may help the traders to dispose of the surplus by granting them the monopoly of selling that particular commodity ; and no other trader shall sell that commodity until the said stock has been cleared.

PENALTY FOR 'SECRET THIEVES,' *i.e.*, 'THIEVES' PROPERLY SO-CALLED

73. मनु 9. 276.] सन्धिं छित्वा तु ये चौर्यं रात्रौ कुर्वन्ति तस्कराः ।
तेषां छित्वा नृपो हस्तौ तीक्ष्णे शूले निवेशयेत् ॥

73. If thieves commit theft at night, after breaking into a house, the king shall cut off their hands and have them impaled on a pointed stake.—(Manu, 9. 276.)

74. व्यास] सन्धिच्छेत्ताऽनेकविधं धनं प्राप्नोति वै गृहात् ।
प्रदाप्यः स्वामिने सर्वं हृतं शूले निवेशयेत् ॥

74. If a thief breaks into a house and steals many things, he should be made to restore the things to the owner and should be impaled on a stake.—(Vyāsa in *Vivādaratnākara*, p. 316 and in *Smṛtichandrikā*, p 738.)

75. बृहस्पति 22. 17.] सन्धिच्छिदो हृतं त्याज्याः शूलमारोहयेत्ततः ।
तथा पान्थमुषो वृक्षे गले बध्वाऽवलम्बयेत् ॥

75. House-breakers shall be compelled to surrender their plunder and be impaled on a stake.—Highwaymen shall be hung by the neck from a tree.—(Bṛhaspati, 22. 17 ; in *Vivādaratnākara*, p. 317.)

76. नारद] स्वदेशघातिनो ये स्युस्तथा मार्गनिरोधकाः ।
कात्यायन] तेषां सर्वस्वमादाय राजा शूले निवेशयेत् ॥

76. Those who injure their own country and those who rob people on the high-road, should be impaled after all their belongings have been confiscated.—(Nārada and Kātyāyana in *Vivādaratnākara*, p. 317.)

KIDNAPPING

77. मनु 8. 323.] पुरुषाणां कुलीनानां नारीणां च विशेषतः ।
मुख्यानां चैव रत्नानां हरणे वधमर्हति ॥

77. For stealing noble men, and specially women, and precious gems, the thief deserves immolation.—(Manu, 8. 323.)

NOTES

'*Immolation*'—What form this immolation will take in any particular case will depend upon the attendant circumstances.—In the case of stealing men and women who are not 'noble,'—or gems that are not 'precious,'—there shall be a fine eleven times the value of what is stolen.—(*Medhātithi*.)

78. बृहस्पति 22. 18.] मनुष्यहारिणो राज्ञा दग्धव्यास्तु कटाग्निना ।
व्यास] स्त्रीहर्ता लोहशयने दग्धव्यो वा कटाग्निना ॥

78. Those who have kidnapped a man shall be burnt on slow straw-fire ; and those who have kidnapped a woman

shall be burnt either on a bed of red-hot iron, or on slow straw-fire.—(Bṛhaspati, 22. 18; and Vyāsa in *Vivādaratnākara*, p. 317.)

NOTES

This refers to cases of men and women of noble families.—(*Vivādachintāmaṇi*, p. 134.)

79. व्यास] नरहर्ता हस्तपादौ छित्वा स्थाप्यश्चतुष्पथे ।

79. If a man steals a man, he should have his hands and feet cut off and then be exposed on the road-crossing.—(Vyāsa in *Vivādaratnākara*, p. 318; *Vīramitrodaya*, p. 494; and *Vivādachintāmaṇi*, p. 134.)

NOTES

This refers to the stealing of men of middle-class families.—(*Vivādachintāmaṇi*, p. 134.)

80. व्यास] पुरुषं हरतः प्रोक्तो दण्ड उत्तमसाहसः ।
सर्वस्वं हरतो नारीं कन्यां तु हरतो वधः ॥

80. For stealing a man, the punishment is the highest amercement; for stealing a woman, the confiscation of the entire property, and for stealing a maiden, immolation.—(Vyāsa in *Vivādaratnākara*, p. 317, and *Vivādachintāmaṇi* p. 135, and Nārada in *Vīramitrodaya*, p. 494.)

NOTES

This refers to the kidnapping of low-born women.—(*Vivādachintāmaṇi*, p. 135.)

81. व्यास] वाजिवारणबालानां चाददीत (सर्वस्वम्) ।

81. If a man steals a horse, an elephant or a boy, his entire property should be confiscated.—Vyāsa in *Vivādaratnākara*, p. 318.)

NOTES

For crimes against (*i.e.*, stealing or misappropriating) large animals, men, fields, houses, gold or fine clothes,—there shall be a fine not less than 200 and not more than 500.—(*Arthashāstra*, 3. 19.)

82. शङ्खलिखित] राजपुत्रापहारेऽष्टसहस्रं शारीरो वा दण्डः। तत्कुलीनेष्वर्धं स्त्रीपुंसयोश्च।

82. If a man kidnaps a son of the king, he should either suffer corporal punishment or be fined 'eight-thousand' (*Kārṣāpaṇas*);—half of that for stealing a person belonging to the royal family;--half of this latter for stealing an ordinary man or woman.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 318.)

NOTES

'*Eight-thousand*' This means 'a thousand and eight' *Kārṣāpaṇas.*—The fine is to be imposed if the culprit is a wealthy person; otherwise the 'corporal punishment' shall be inflicted.—(*Vivādaratnākara*, p. 318.)

83. शङ्खलिखित] हस्त्यश्वरथगोवृषयानेषु राजपुत्रापहारवद्दण्डः॥

83. For stealing an elephant, a horse, a chariot, a cow, a bull, or a conveyance,—the punishment shall be the same as that for kidnapping the king's son (*i.e.*, corporal punishment or a fine of 'eight-thousand').—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 318.)

84. शङ्खलिखित] अजाविकेष्वर्धत्रयोदश पणाः। नकुलविडालापहरणे त्रयः कार्षापणाः।

84. For stealing a goat or a sheep, the fine shall be 12½ *Paṇas*;—for stealing a mangoose or a cat, 3 *Kārṣāpaṇas.*—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 319.)

85. मनु 8. 342.] असन्दितानां सन्दाता सन्दितानां च मोचकः। दासाश्वरथहर्ता च प्राप्तः स्याच्चौरकिल्विषम्॥

85. One who enchains the unchained,—or sets free the enchained,—as also one who takes away a slave, a horse or a chariot,—incurs the guilt of the 'thief.'—(Manu, 8. 423.)

NOTES

For forcibly binding up a man or woman, or setting free one who is bound, the fine shall be between 500 and 1000.—(*Arthashāstra*, 3. 17.)

'*Enchains the unchained*'—When a man ties up a stray cow, the presumption is that he did it for the purpose of keeping it for himself. If

however it could be proved that he tied it up with a view to prevent it from going further astray, or from harm, —no guilt would attach to him. —'*Guilt of the thief*'—though there are several forms of punishment for the 'thief,' yet 'Immolation' is what is meant here; and the 'cutting off of the limb' would be the right punishment. —(*Medhātithi.*)

The penalty for 'theft' may be either corporal or monetary.—(*Vivādaratnākara*, p. 319.)

86. मनु 8. 325.] गोषु ब्राह्मणसंस्थासु खरिकायाश्च भेदने ।
पशूनां हरणे चैव सद्यः कार्योऽर्धपादिकः ॥

86. For stealing cows belonging to a Brāhmaṇa,—and for piercing them with the goad,—and for the stealing of animals,—the man should be immediately made half-footed.—(Manu, 8. 325.)

NOTES

'*Piercing them with the goad*'—This is the meaning of '*Kharikāyāshcha bhedane,*' according to Medhātithi; *Vivādaratnākara* (p. 319) reads '*Sphurikāyāshcha bhedane*' and explains it as 'piercing the nostrils of the barren cow with a view to yoking her.'

'*Animals*'—Small animals (*Vivādaratnākara*), goats, sheep and the like.—(*Medhātithi.*)

87. मनु 8. 324.] महापशूनां हरणे शस्त्राणामौषधस्य च ।
कालमासाद्य कार्यं च दण्डं राजा प्रकल्पयेत् ॥

87. For the stealing of large animals, of weapons or of medicines, the king shall determine the punishment after considering the time and the purpose.—(Manu, 8. 324.)

NOTES

'*Large animals*'—*e.g.*, the horse or the elephant.

'*Time and purpose*'—*e. g.*, the stealing of the horse or the weapon would be specially reprehensible at a time when the army is preparing to go to war.—(*Vivādachintāmaṇi*, p. 135.)

In the case of a sword, stolen under normal circumstances, the penalty would only be a *fine*, either double or treble or eleven times the value of the sword; but if it is stolen at a time when an enemy is near at hand and ready to strike, the penalty would be nothing short of *death*. Similarly in the case of a medicine, if it is stolen at a time when it is most needed for saving the life of a patient, the penalty shall be very much heavier than what it would be if it were stolen at other times.—(*Medhātithi.*)

88. नारद] गोषु ब्राह्मणसंस्थासु स्फुरायाश्छेदनं भवेत् ।
दासीषु हरतो मध्यस्तथा पादस्य छेदनम् ॥

88. For stealing cows belonging to a Brāhmaṇa the leg should be cut off, just above the ankle ; for stealing slave-girls, the middle amercement, and also the cutting off of the foot.—(Nārada in *Vivādaratnākara*, p. 319.)

89. याज्ञवल्क्य 2. 273.] वन्दिग्राहांस्तथा वाजिकुञ्जराणां च हारिणः ।
प्रसह्य घातिनश्चैव शूलमारोपयेन्नरान् ॥

89. Kidnappers, stealers of horses and elephants, and those who strike with violence should be impaled.—(Yājña. 2. 273)

NOTES

All these penalties, from finger-chopping to death, are meant to pertain to those things whose stealing renders a man liable to suffer the highest amercement.—(*Parāsharamādhava*, p. 302.)

90. मनु 9. 280.] कोष्ठागारायुधागारदेवतागारभेदकान् ।
हस्त्यश्वरथहर्तॄंश्च हन्यादेवाविचारयन् ॥

90. Those who break into a store-house, or armoury, or a temple, —and those who steal elephants, horses and chariots—these the king shall put to death.—(Manu, 9. 280.)

91. विष्णु] गोऽश्वोष्ट्रगजापहार्येककरपादिकः कार्यः । अजाद्यपहार्येककरस्य ।

91. One who steals a cow, a horse, a camel or an elephant should have one hand and one foot cut off ; one who steals a goat should have one hand cut off.—(Viṣṇu in *Vivādaratnākara*, p. 320 and *Vivādachintāmaṇi*, p. 136.)

NOTES

The ' goat ' meant here is one that was going to be used at a sacrificial performance.—(*Vivādaratnākara*, p. 320.)

92. व्यास] अश्वहर्ता हस्तपादौ कटिं छित्वा प्रमाप्यते ।
पशुहर्तुश्चार्धपादं तीक्ष्णशस्त्रेण कर्तयेत् ॥

92. One who steals a horse should have his hands, feet and loins cut off, and then killed,—one who steals an animal should have half of his foot cut off by a sharp weapon.—

(Vyāsa in *Vivādaratnākara*, p. 32 ; *Vīramitrodaya*, p. 494 and *Vivādachintāmaṇi*, p. 136.)

NOTES

This heavy penalty is for the stealing of a very highly qualified horse.—(*Vivādaratnākara*, p. 321.)

93. नारद] महापशून् स्तेनयतो दण्ड उत्तमसाहसः ।
मध्यमो मध्यमपशौ पूर्वः क्षुद्रपशौ हृते ।

93. One who steals large animals should suffer the highest amercement;—for stealing animals of the middle size, the middle amercement;—and for stealing small animals, the lowest amercement.—(Nārada in *Vivādaratnākara*, p. 321 and *Vīramitrodaya*, p. 494.)

94. याज्ञवल्क्य 2. 274.] उत्क्षेपकग्रन्थिभेदौ करसन्दंशभेदकौ ।
कार्यौ द्वितीयेऽपराधे करपादैकहीनकौ ॥

94. The 'lifter' and the 'cut-purse' should have their thumb and index-finger cut off ; if the offence is repeated, one hand and one foot should be cut off.—(Yājña. 2. 274 ; also Vyāsa in *Vivādaratnākara*, p. 321.)

NOTES

'*Granthibhedaka*,' ('cut-purse') has been explained by *Vivādachintāmaṇi* (p. 136) as 'one who unties the knot of cattle with a view to steal them.' All others are agreed in taking it as 'cut-purse.'

95. मनु 8. 277.] अङ्गुली ग्रन्थिभेदस्य छेदयेत् प्रथमे ग्रहे ।
द्वितीये हस्तचरणौ तृतीये वधमर्हति ॥

95. Of the cut-purse, the king should have two fingers cut off, on the first conviction ; on the second, a hand and a foot ; and on the third, he should be put to death.—(Manu, 8. 277.)

NOTES

'*Granthibhedaka*'—one who cuts out a purse, *i.e.*, opens the knots or bundles of cloth ;—or it may apply to those persons who are bent upon slinking away with the property stolen,—after loosening the knots with which they may have been bound.—(*Medhātithi*.)

'*Two fingers*,'—*i.e.*, the thumb and the index-finger.—(*Vivādaratnākara*, p. 321 and *Vīramitrodaya*, p. 494.)

96. नारद] प्रथमे ग्रन्थिभेदानामङ्गुल्यङ्गुष्ठयोर्वधः ।
द्वितीये चैव यच्छेषं तृतीये वधमर्हति ॥

96. On the first conviction the cut-purse shall have his index-finger and the toe cut off; on the second, the rest (of the hand and feet) shall be cut off; and on the third, he shall suffer death.—(Nārada in *Vivādaratnākara*, p. 322.)

97. बृहस्पति 22. 19.] धान्यहारा दशगुणं दाप्यास्तद्द्विगुणं दमम् ।

97. Stealers of grain shall be compelled to give to the owner ten times the quantity stolen; and double the quantity as fine to the king.—(Bṛhaspati, 22. 19; in *Vivādaratnākara*, p. 322.)

98. मनु 8. 320.] धान्यं दशभ्यः कुम्भेभ्यो हरतोऽभ्यधिकं वधः ।
शेषेऽप्येकादशगुणं दाप्यस्तस्य च तद्धनम् ॥

98. For one who steals more than ten 'Jars' of grain there shall be 'immolation'; in other cases, he should be made to pay eleven times as much as fine, and also make good the loss to the owner.—(Manu, 8. 320.)

Notes

The 'Jar' is a particular measure, equivalent to 20 or 22 *seers*, according to the custom of the place.—'*Immolation*'—This is relaxed in accordance with the circumstances attending each case.—'*Make good, etc.*'—This applies to all cases of theft.—'*In other cases*'—when the quantity stolen is 10 'Jars' or less.—(*Medhātithi*.)

Notes from Arthashāstra

Thefts

A pick-pocket, a cut-purse or a roof-breaker shall, for his first offence, have his two fingers cut off and be fined 54 *Paṇas*. For the second offence, all the fingers shall be cut off, and he shall be fined a hundred. For the third offence, the right hand shall be cut off and he shall be fined 400. For the fourth offence, death.—(*Arthashāstra*, 4. 10.)

For stealing a cock, a mangoose, a cat, a dog or a pig,—or killing them,—a fine of 54 *Paṇas*, and cutting off of the tip of the nose.—For stealing a deer fallen into a noose, or a bird caught in a net, or an elephant caught in a pit,—what has been stolen shall be restored and a fine equal to its value shall be paid.—For stealing deer from the deer-park, or valuable timber from the timber-forest, the fine is 100. For stealing a lizard, a sporting animal, or a sporting bird,—or for killing these,—200. An artisan, an artist, an actor, an

ascetic,—if these people steal some small articles, they shall be fined 100 ;—if they steal a large article, 200, —also if they steal agricultural implements.—(*Arthashāstra*, 4. 10.)

If a man entering a fort without permission,—or making a hole in the wall, walks off after taking away a pledged article,—his shoulder shall be cut, or a fine of 200 imposed.—If a man steals a loaded boat or a small animal, one of his feet shall be cut off, or a fine of 300 imposed.—If he steals an animal dedicated to a temple, or an image of a deity, or a slave dedicated to a temple, or a field, house, gold, gem or corns belonging to a temple,—either a fine of 1,000, or simple death.—(*Arthashāstra*, 4. 10.)

99. मनु 8. 321-322.] तथा धरिममेयानां शतादभ्यधिके वधः ।
सुवर्णरजतादीनामुत्तमानां च वाससाम् ॥
पञ्चाशतस्त्वभ्यधिके हस्तच्छेदनमिष्यते ।
शेषेष्वेकादशगुणं मूल्याद्दण्डं प्रकल्पयेत् ॥

99. In the case of articles weighed by scales—gold, silver and the rest,—if more than a hundred are stolen, there should be 'immolation'; as also in the case of clothes of good quality ;—if more than fifty are stolen, the hands should be cut off ;—in other cases, the king shall inflict a fine, eleven times the value of what is stolen.—(Manu, 8. 321-322 ; also Viṣṇu, 5. 81-82.)

NOTES

The stolen property is to be restored in every case.—(*Vivādachintāmaṇi*, p. 139.)

'*A hundred*'—No particular coin or measure is specified, because what is meant is that particular measure which, in the country concerned, happens to be the standard of weighment by scales. The rule therefore is to be administered according to local usage.—(*Medhātithi*.)

100. नारद] तुलाधरिममेयानां गणिमानां च सर्वशः ।
एभिस्तूत्कृष्टमूल्यानां मूल्याद्दशगुणो दमः ॥

100. In the case of articles weighed by scales, those that are measured, or those counted by numbers,—which are specially valuable,—the fine is ten times the value of the article concerned.—(Nārada in *Vivādaratnākara*, p. 323 and *Vivādachintāmaṇi*, p. 138.)

NOTES

'*Specially valuable*'—*i.e.*, more valuable than wood and other things.—(*Vivādachintāmaṇi*, p. 138.)

101. नारद] सुवर्णरजतादीनामुत्तमानां च वाससाम् ।
रत्नानां चैव सर्वेषां शतादभ्यधिके वधः ॥

101. For stealing gold, silver and other metals or valuable clothes, or precious gems,—the penalty is death, if what is stolen is more than a hundred.—(Nārada in *Vivādaratnākara*, p. 324.)

102. शङ्खलिखित] सुवर्णरत्नापहरणे [शारीरोऽङ्गच्छेदो वा] ।

102. For stealing gold and gems,—corporeal punishment or cutting off of limbs—(Shankha-Likhita in *Vivādaratnākara*, p. 324 and *Vivādachintāmaṇi*, p. 139.)

NOTES

'*Limbs*'—Ear, nose and the like.—This rule refers to cases where the article stolen is less than fifty, and where the culprit is poor.—(*Vivādaratnākara*, p. 324.)

'*Corporeal punishment or cutting off of limbs.*'—The meaning is that if the man has stolen some small quantity of gold or gem, he should be *beaten*; if what is stolen is less than a 'hundred,' but more than 'fifty,' he should have his ears cut off.—(*Vivādachintāmaṇi*, p. 139.)

103. विष्णु 5. 87.] रत्नापहार्युत्तमसाहसं (दण्ड्यः] ।

103. The stealer of gems should suffer the highest amercement.—(Viṣṇu, 5. 87; in *Vivādaratnākara*, p. 324.)

NOTES

This refers to cases where the culprit is one on whom the death-penalty cannot be inflicted, but is rich enough to pay a heavy fine.—(*Vivādaratnākara*.)

104. मनु 8. 323.] मुख्यानां चैव रत्नानां हरणे वधमर्हति ।

104. For stealing precious gems, the thief deserves 'immolation.'—(Manu, 8. 323.)

105. शङ्खलिखित] अष्टशतं सीताद्रव्यापहरणे ।

105. For stealing agricultural implements, the fine is 108.—(Shankha-Likhita in *Vivādaratnākara*, p. 324 and *Vivādachintāmaṇi*, p. 139.)

NOTES

As usual, '*aṣṭashatam*' has been explained as 108.

106. मनु 9. 293.] सीताद्रव्यापहरणे शस्त्राणामौषधस्य च ।
कालमासाद्य कार्यं च राजा दण्डं प्रकल्पयेत् ॥

106. For the stealing of agricultural implements, of arms, or of medicines, the king shall determine the punishment after taking into consideration the time and the usefulness.—(Manu, 9. 293.)

NOTES

If the time of cultivation is near at hand, the punishment for stealing the implements shall be severe; similarly if the medicine is stolen about the time that it was to be administered.—(*Medhātithi.*)

107. मनु 8. 331.] परिपूतेषु धान्येषु शाकमूलफलेषु च ।
निरन्वये शतं दण्डः सान्वयेऽर्धशतं दमः ॥

107. For stealing husked grains, or vegetables, roots or fruits,—there shall be a fine of a hundred, in a case where there has been no apology; and fifty, if there has been an apology.—(Manu, 8. 331.)

NOTES

The punishment here laid down is in reference to the stealing of corns lying in the threshing yard; in the case of stealing corns in the store-room, the penalty shall be 'eleven times the value,' (see 99 above).—(*Medhātithi*, and *Vivādaratnākara*, p. 324.)

108. मनु 8. 330.] पुष्पेषु हरिते धान्ये गुल्मवल्लीनगेषु च ।
अल्पेष्वपरिपूतेषु दण्डः स्यात् पञ्चकृष्णलः ॥

108. For stealing flowers, green corns, shrubs, creepers, trees and unhusked grains, the fine shall be 5 *Kṛṣṇalas*.—(Manu, 8. 330.)

NOTES

'*Kṛṣṇalas*'—The *Kṛṣṇala* is a coin of various denominations, made of different metals; the exact fine therefore shall be determined in each case, in accordance with the value and utility of the articles stolen. The Ancients, however, have held that the *Kṛṣṇala* is of *gold* only.—(*Medhātithi*).

'*Green corn*'—*i.e.*, what is stolen for purposes of fodder.—(*Vivādaratnākara*, p. 325.)

109. व्यास] मध्यहीनद्रव्यहारी पुष्पमूलफलस्य च ।
दाप्यस्तु द्विगुणं दण्डम्, अथवा पञ्च कृष्णलान् ॥

109. He who steals articles of middle or small value, or flowers, roots or fruits,—should be made to pay a fine, double the amount of their value ;—or five *Kṛṣṇalas*.—(Vyāsa in *Vivādaratnākara*, p. 325.)

NOTES

Such articles as salt and the like.—(*Vivādaratnākara*, p. 325.)

110. गौतम] फलहरितधान्यशाकादाने पञ्च कृष्णलान्येवं ।

110. For stealing fruits, green corn or vegetables,—the fine shall be five *Kṛṣṇalas*.—(Gautama in *Vivādaratnākara*, p. 325.)

111. मनु 8. 326-329.] सूत्रकार्पासकिण्वानां गोमयस्य गुडस्य च ।
दध्नः क्षीरस्य तक्रस्य पानीयस्य तृणस्य च ॥
वेणुवैदलभाण्डानां लवणानां तथैव च ।
मृण्मयानां च हरणे मृदो भस्मन एव च ॥
मत्स्यानां पक्षिणां चैव तैलस्य च घृतस्य च ।
मांसस्य मधुनश्चैव यच्चान्यत् पशुसम्भवम् ॥
अन्येषां चैवमादीनां मद्यानामोदनस्य च ।
पक्वान्नानां च सर्वेषां तन्मूल्याद् द्विगुणो दमः ॥

111. In the case of the theft of yarns, cotton, fermenting drug, cowdung, molasses, curds, milk, skimmed curd, water and grass,—of vessels made of bamboo or cane, as also of salts, earthenware, earth and ashes,—of fish, birds, oils, clarified butter, meat, honey, and other animal-products,—spirituous liquors, cooked rice and all kinds of cooked food,—the fine shall be double the value of the thing stolen.—(Manu, 8. 326—329.)

112. मनु 8. 333.] यस्त्वेतान्युपक्लृप्तानि द्रव्याणि स्तेनयेन्नरः ।
तमाद्यं दण्डयेद् राजा यश्चाग्निं चोरयेद्गृहात् ॥

112. If these things are stolen after they have been refined and are ready for use, the thief shall be fined 100 ;—so also one who steals fire from the house.—(Manu, 8. 333.)

NOTES

The 'fire' meant here is (*a*) the fire kindled for cooking meals, or (*b*) that kindled in connection with the Agnihotra-offerings, or (*c*) that which is set up, without consecration, for the comfort of the cold-stricken poor.—(*Medhātithi*).

113. विष्णु] सूत्रकार्पासगोमयदधिक्षीरतक्रलवणगुडतृणमृद्भस्म-मत्स्यपक्षितैलघृतमांसमधुवैणववेणुमृण्मयलोहभाण्डानाम-पहर्ता मूल्याद्द्विगुणं दण्ड्यः ॥

113. Yarns, cotton, cowdung, curd, milk, skimmed curd, salt, molasses, grass, earth, ashes, fish, birds, oil, clarified butter, meat, honey, vessels made of bamboo, cane, clay or iron, and cooked food,—men who steal these should be fined double the value of the thing stolen.—(Viṣṇu in *Vivādaratnākara*, p. 327).

114. शङ्खलिखित] कृतकाष्ठाश्मकौलालचर्मवेत्रदलभाण्डेषु मूल्यात् पञ्चगुणः—त्रयो वा कार्षापणाः । एकचक्रापहरणे चत्वारिंशत् । शकटे त्वशीतिशतम् ।

114. Articles made of wood or stone, earthenware, leather, vessels made of cane,—for stealing these, the fine shall be five times the value of the stolen article,—or three *Kārṣāpaṇas* ;—for stealing one wheel, 40 *Paṇas* ;—for stealing a cart, 180 *Paṇas*.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 327.)

115. नारद] सर्वेषामल्पमूल्यानां मूल्यात् पञ्चगुणो दमः ॥

115. For stealing things of small value, the fine should be five times the value of the article.—(Nārada in *Vivādaratnākara*, p. 327.)

NOTES

For crimes against (*i.e.*, misappropriating or stealing) small gems and metals, the fine shall be in proportion to the nature of the crime ;—in case of flowers, fruits, vegetables, roots, cooked food, leather, article of split bamboo and earthenware, the fine shall be between 12 and 24 *Paṇas*.—In the case of iron, wood, rope, small animals and clothes, between 24 and 48.—In the case of copper vessels, glass-vessels and ivory-vessels, between 48 and 96.—(*Arthashāstra*.)

116. व्यास] अल्पमूल्यापहरणे क्षीरे तद्विकृतो तथा।
स्वामिने तत्समं दाप्यो दण्डं च द्विगुणं नृपे॥

116. If a man steals milk, milk-products or such other articles of small value, he should be made to restore to the owner the same quantity of the same article, and also to pay a fine to the king, double the value of the article stolen.—(Vyāsa in *Vivādaratnākara*, p. 328.)

117. मनु 8. 319.] यस्तु रज्जुं घटं कूपात् हरेत् भिन्द्याच्च यः प्रपाम्।
स दण्डं प्राप्नुयान्माषं तच्च तस्मिन् समाहरेत्॥

117. When one steals the rope or the water-pot from the well,—or damages a water-drinking booth,—he should be punished with a fine of one *Māṣa* and should restore the article to its place.—(Manu, 8. 319.)

118. विष्णु] अनुक्तद्रव्याणामपहर्ता मूल्यसमम्।

118. For stealing things for which no special penalty is prescribed, the thief should be made to pay their price.—(Viṣṇu in *Vivādaratnākara*, p, 328).

119. याज्ञवल्क्य 2. 275.] क्षुद्रमध्यमहाद्रव्यहरणे सारतो दमः।
देशं कालं वयः शक्तिं सञ्चिन्त्य दमकर्मणि॥

119. For the stealing of things of small, middling or superior value,—the penalty inflicted shall be in accordance with the value of the thing concerned; and in the determination of the exact penalty to be inflicted, due consideration should be made of the time and place, as also the age and capacity of the culprit.—(Yājña. 2. 275.)

NOTES

What the three classes of things are has been explained by Nārada (see Section 2, above).

120. नारद] साहसेषु य एवोक्तस्त्रिषु दण्डो मनीषिभिः।
स एव दण्डः स्तेयेषु द्रव्येषु त्रिष्वनुक्रमात्॥

120. The penalties that have been ordained in regard to the three kinds of crime may be inflicted in the case of the

stealing of the three kinds of things.—(Nārada in *Vivādaratnākara*, p. 328.)

121. कात्यायन] येन येन परद्रोहं करोत्यङ्गेन तस्करः ।
छिन्द्यात् तत्तु नृपस्तस्य न करोति यथा पुनः ॥

121. By whatever limb the thief injures a man, that limb the king shall cut off; so that he may not repeat the offence.—(Kātyāyana in *Vivādaratnākara*, p. 329.)

122. बृहस्पति] तृणं वा यदि वा काष्ठं पुष्पं वा यदि वा फलम् ।
अनापृच्छ्य तु गृह्णानो हस्तच्छेदनमर्हति ॥

122. If a man, without permission of the owner, takes away grass or wood or fruit or flower,—he deserves to have his hand cut off.—(Bṛhaspati in *Vivādaratnākara*, p. 329.)

NOTES

This refers to cases where the grass and other things belong to a man of superior caste.—(*Vivādachintāmaṇi*, p. 142.)

123. शङ्खलिखित] अब्राह्मणो ब्राह्मणस्य समिदाज्येध्माग्निकाष्ठतृणोपलपुष्पफलमूलान्यपहरन् बलादविज्ञातो वा हस्तच्छेदनमर्हति ॥

123. If a non-Brāhmaṇa,—either knowingly or unknowingly—steals fuel, butter, fire, wood, Kusha, flowers, fruits and roots, belonging to a Brāhmaṇa, his hands should be cut off.—(Shaṅkha-Likhita in *Vivādaratnākāra*, p. 329 and in *Aparārka*, p. 348.)

124. आपस्तम्ब] पुरुषवधे स्तेये भूम्यादान इति स्वान्यादाय वध्यः ।
चक्षुर्निरोधश्च तेषु ब्राह्मणस्य ॥

124. For man-slaughter, theft, and stealing of land—a man should suffer death. For the same offence, the Brāhmaṇa should have his eyes taken out.—(Āpastamba in *Vivādaratnākara*, p. 330.)

NOTES

'*Theft*'—of *gold*, is what is meant here.—(*Vivādachintāmaṇi*, p. 142.)

125. बृहस्पति 22.22.] वृत्तस्वाध्यायवान् स्तेयी बन्धनात् क्लिश्यते चिरम् ।
स्वामिने तद्धनं दाप्यः प्रायश्चित्तं तु कारयेत् ॥

125. When a Vedic scholar of excellent character has committed a theft, if he were imprisoned, he would suffer much pain ; he should therefore be made to restore the stolen goods to the owner and to perform an expiatory penance.—(Bṛhaspati, 22. 22 ; in *Vivādaratnākara*, p. 331.)

126. याज्ञवल्क्य 2. 270.] चौरं प्रदाप्यापहृतं घातयेद्विविधैर्वधैः ।
सचिह्नं ब्राह्मणं कृत्वा स्वराष्ट्राद्विप्रवासयेत् ॥

126. When it is definitely certain that a man has committed theft, he should be made to restore the stolen goods and to suffer various forms of corporeal punishment. If he is a Brāhmaṇa, he should be branded and banished.—(Yājña. 2. 270.)

NOTES

'*Branded*'—with the mark of the female organ (*Vivādachintāmaṇi*, p. 143),—with the mark of the dog's foot (*Mitākṣarā* and *Vīramitrodaya*, p. 496, quoting Manu, 9. 237.)

This applies to Brāhmaṇas of the middle class.—(*Vivādachintāmaṇi*, p. 143).—It applies to cases where the Brāhmaṇa refuses to perform the expiatory penances after paying the fine.—(*Mitākṣarā* and *Parāsharamādhava*, p 304.)—It applies to the case of stealing such things whose stealing renders one liable to the highest amercement.—(*Mitākṣarā*.)

127. विष्णु] स्तेनाः सर्व एवापहृतं धनिकस्य धनं दाप्याः ।
ततस्तेषामभिहितदण्डप्रयोगः ॥

127. In all cases, thieves should first be made to restore the stolen goods to the owner, and then to undergo the punishment ordained.—(Viṣṇu in *Vivādaratnākara*, p. 331.)

128. नारद] न त्वहोढान्विताश्चौरा वध्या राज्ञा ह्यनागमाः ।
सहोढान् सोपकरणान् क्षिप्रं राजा प्रवासयेत् ॥

128. Unless the thief has been caught with the stolen property on him,—and until his guilt has been otherwise established,

—he shall not be punished. But in case he has been found with the stolen property and the implements of burglary, he shall be quickly banished.—(Nārada in *Vivādaratnākara*, p. 331 ; *Aparārka*, p. 849, where it is attributed to Manu.)

129. वृद्धमनु] ततस्तान् घातयेद्राजा नार्थदण्डेन दण्डयेत् ।

129. Thieves should be punished corporeally, not with monetary fines.—(Vṛddha-Manu in *Vivādaratnākara*, p. 332.)

NOTES

This refers to *non-Brāhmaṇa* thieves.

130. कात्यायन] मानवाः सद्य एवाहुः सहोढानां प्रवासनम् ।
गौतमानामनिष्टं तत् ॥
सहोढमसहोढं वा तत्त्वागमितसाहसम् ।
संगृह्य चिह्नमावेद्य सर्वस्वैर्विनियोजयेत् ॥
अयःसन्दानगुप्ताश्च मन्दभक्ता बलान्विताः ।
कुर्युः कर्माणि नृपतेरामृत्योरिति कौशिकः ॥

130. The followers of Manu have laid down banishment of thieves caught with the stolen property ;—this the followers of Gautama do not accept ;—whether or not the man has been caught with the stolen property,—if he has been proved to have committed the theft, he should have all his property confiscated. Thieves should be kept till their death, in iron chains on low diet, being made to do hard labour for the king ;—such is the view of Kaushika.—(Kātyāyana in *Vivādaratnākara*, p. 332, and in *Vivādachintāmaṇi*, p. 143.)

NOTES

(*a*) If the culprit is one endowed with character and Vedic learning, he should be banished ;—(*b*) if he is not so endowed, and is wealthy, his entire property should be confiscated ;—(*c*) if poor, he should be imprisoned.— '*Low diet*'—just enough to enable him to do the work.—(*Vivādaratnākara*, p. 331; and *Vivādachintāmaṇi*, p. 143.)

131. स्मृति] परदेशाद् हृतं द्रव्यं स्वदेशे यः समाहरेत् ।
गृहीत्वा तस्य तद्द्रव्यमदण्डं तं विसर्जयेत् ॥

131. If a thief, having committed theft in foreign lands, has brought the stolen property home to his own country, the king of the latter shall confiscate that property and send him off without punishment.—(Quoted in *Vivādaratnākara*, p. 333.)

132. वशिष्ठ] स्तेनोऽनुप्रवेशान्न दुष्यति ।
शस्त्रधारी सहोढो व्रणसम्पन्नश्च व्यपदिष्टश्चैवेषाम् ॥

132. A man is not to be blamed for merely following a thief ; he is to be blamed only when he has been caught with the stolen property, or bears marks of wounds inflicted during the stealing operations, or is accused by very trustworthy persons.—(Vashiṣṭha in *Vivādaratnākara*, p. 333.)

ABETTORS OF THEFT

133. मनु 9. 271.] ग्रामेष्वपि च ये केचिच्चौराणां भक्तदायकाः ।
भाण्डावकाशदाश्चैव सर्वांस्तानपि घातयेत् ॥

133. The king shall punish all those in a village who supply food to the thieves, or provide room for the stolen goods.— (Manu 9. 271.)

134. मनु 8. 278.] अग्निदान् भक्तदांश्चैव तथा शस्त्रावकाशदान् ।
सन्निधातॄंश्च मोषस्य हन्याच्चौरानिवेश्वरः ॥

134. The king shall punish like thieves, those who provide fire, offer food and supply arms and lodging to thieves ; and also those who abet their escape.—(Manu, 8. 278.)

NOTES

'*Fire*'—For warming themselves and such other purposes.—(*Medhātithi.*) When the help spoken of has been given either through fear or through ignorance,—this rule does not apply.—(*Vivādaratnākara*, p. 339.)

135. याज्ञवल्क्य 2. 276.] भक्तावकाशाग्न्युदकमन्त्रोपकरणव्ययम् ।
दत्वा चौरस्य हन्तुर्वा जानतो दम उत्तमः ॥

135. Those who knowingly provide for thieves, food, shelter, fire, water, advice, implements or funds should suffer the highest amercement.—(Yājña. 2. 276.)

NOTES

'*Fire and water.*'—For cooking or warming, and for allaying thirst.—(*Mitākṣarā* and *Aparārka*).—For use in the stealing operations—(*Vivādachintāmaṇi*).

136. नारद] भक्तावकाशदातारः स्तेनानां तु प्रसर्पताम् ।
शक्ताश्च ये उपेक्षन्ते तेऽपि तद्दोषभागिनः ॥

136. Those who provide food and shelter to thieves,—and also those who, while able to catch them, let them go,—shall be punished like thieves.—(Nārada in *Vivādaratnākara*, p. 339.)

137. नारद] आह्वायकादेशकरास्तेषामन्तरदायकाः ।
समदण्डाः स्मृताः सर्वे ये च प्रच्छादयन्ति तान् ॥

137. Those who prompt thieves, those who direct them, those who provide them with opportunities and those who hide them,—all these should be punished like the thieves themselves.—(Nārada in *Vivādaratnākara*, p. 340; and in *Vivādachintāmaṇi*, p. 145.)

138. कात्यायन] क्रेतारश्चैव भाण्डानां प्रतिग्राहिण एव च ।
समदण्डाः स्मृताः सर्वे ये च प्रच्छादयन्ति तान् ॥

138. Those who buy stolen property and those who receive it in gift should be punished like thieves.—(Kātyāyana in *Vivādaratnākara*, p. 340; in *Aparārka* and in *Vivādachintāmaṇi*, p. 145.)

139. विष्णु] प्रसह्य तस्कराणामवकाशभक्तप्रदाश्चान्यत्र राजाशक्तेः ।

139. Those who give food and shelter to thieves should be punished,—except when the king is incapable of protecting

the people (who would thereby be compelled to seek safety by bribing thieves and robbers with food and shelter).—(Viṣṇu in *Vivādaratnākara*, p. 340.)

140. मनु 8. 340.] योऽदत्तादायिनेा हस्ताल्लिप्सेत ब्राह्मणो धनम् ।
याजनाध्यापनेनापि यथा स्तेनस्तथैव सः ॥

140. The Brāhmaṇa who receives gifts from thieves should be dealt with like a thief,—even though he may have earned them through sacrificing and teaching.—(Manu, 8. 340.)

141. मनु. 9. 272.] राष्ट्रेषु रक्षाधिकृतान् सामन्तांश्चैव चोदितान् ।
अभ्याघातेषु मध्यस्थान् शिष्याच्चौरानिव द्रुतम् ॥

141. If those entrusted with the work of guarding the realm, and those vassals who have been ordered to assist, should remain neutral during raids against thieves,—the king shall punish them like thieves.—(Manu, 9. 272.)

142. मनु 9. 274.] ग्रामघाते हिडाभङ्गे पथि मोषाभिदर्शने ।
शक्तितो नाभिधावन्तो निर्वास्याः सपरिच्छदाः ॥

142. If people do not hasten to assist, to the best of their power, whenever a village is attacked, or a dyke is breaking, or a highway robbery is being committed,—they should be banished along with their chattels.—(Manu. 9. 274.)

143. याज्ञवल्क्य 2. 231.] यः साहसं कारयति स दाप्यो द्विगुणं दमम् ।
यश्चैवमुक्त्वाऽहं दाता कारयेत्स चतुर्गुणम् ॥

143. He who gets a crime committed should suffer double the penalty ordained for that crime ;—he who promises payment for the committing of the crime should suffer four times the penalty for that crime.—(Yājña. 2. 231.)

144. कात्यायन] आरम्भकृत् सहायश्च तथा मार्गानुदेशकः ।
आश्रयशस्त्रदाता च भक्तदाता विकर्मिणाम् ॥
अनिषेद्धा क्षमो यः स्यात् सर्वे तत्कार्यकारिणः ।
यथाशक्त्यनुरूपं तु दण्डमेषां प्रकल्पयेत् ॥

144. The criminal who actually does the act,—he who helps him,—he who guides him to the place,—he who provides him with shelter and implements,—he who provides him with food,—and he who does not prevent him, even when capable of doing so,—all these are committers of the crime and should be adequately punished.—(Kātyāyana in *Aparārka*, p. 821.)

DISTINCTIONS BASED ON CASTE

145. मनु 8. 337-338.] अष्टापाद्यं तु शूद्रस्य स्तेये भवति किल्बिषम् ।
षोडशैव तु वैश्यस्य द्वात्रिंशत्क्षत्रियस्य तु ॥
ब्राह्मणस्य चतुःषष्टिः पूर्णं वापि शतं भवेत् ॥

145. In the case of theft, the guilt of the Shūdra is eight-fold; that of the Vaishya, sixteen-fold; that of the Kṣattriya, thirty-two fold; that of the Brāhmaṇa, sixty-four-fold, or even a hundred-fold.—(Manu, 8. 337-338.)

NOTES

The meaning is that where an ordinary Shūdra would be fined 1 *Paṇa*, the educated Shūdra should be fined 8; and so on. The exact text is merely illustrative; all that is meant is that the penalty inflicted upon one who is expected to know and behave better should be heavier than that upon an ordinary man.—(*Medhātithi.*)

On the basis of the principle underlying this rule, in all cases, for the same crime, the penalty on the Brāhmaṇa should be double of that on the Kṣattriya; that on the Kṣattriya double of that on the Vaishya; and that on the Vaishya double of that on the Shūdra.—(*Vivādaratnākara*, p. 342.)

See also Sections 124 & 125.

146. गौतम] अष्टापाद्यं स्तेयकिल्बिषं शूद्रस्य । द्विगुणोत्तराणीतरेषां प्रतिवर्णम् । विदुषोऽतिक्रमे दण्डभूयस्त्वम् ॥

146. The guilt of theft is eightfold in the Shūdra, it increases twofold with each ascending caste; as for the learned, the punishment should be specially heavy.—(Gautama, 12.15—17, in *Mitākṣarā*, 2. 275.)

147. गौतम] न शारीरो ब्राह्मणस्य दण्डः । कर्मवियोगविख्यापनविवासनाङ्ककरणानि । अवृत्तौ प्रायश्चित्तीयते हि सः ॥

147. No corporeal punishment shall be inflicted on the Brāhmaṇa ; he may be boycotted, or publicly ridiculed (by carrying on a donkey and so forth), or banished, or branded. If he has no livelihood, he should perform expiations.—(Gautama in *Vivādaratnākara*, p. 330.)

NOTES

This refers to a Brāhmaṇa engaged in sacrifices.—(*Vivādaratnākara*, p. 330.)

148. शङ्खलिखित] ब्राह्मणस्य तु मौण्ड्यमितरेषां खरयानम् ॥

148. The Brāhmaṇa shall have his head shaved and others shall be carried about on a donkey.—(Shaṅkha in *Vivādachintāmaṇi*, p. 143.)

NOTES

This refers to the Brāhmaṇa engaged in sacrifices.—' *Others* '—Kṣattriya and the rest.—(*Vivādachintāmaṇi*, p. 143.)

COMPENSATION FOR THEFT

149. आपस्तम्ब] ग्रामेषु नगरेष्वार्यान् शुचीन् सत्यशीलान् प्रजागुप्तये निदध्यात् ॥

149. In villages and towns noble, honest and truthful officers should be appointed for the protection of the people against thieves ; [and these shall be responsible for theft committed within their jurisdiction].—(Āpastamba in *Vivādaratnākara*, p. 343 ; and in *Vivādachintāmaṇi*, p. 147.)

NOTES

The meaning is that those officers should be made to make good the property stolen.—(*Vivādaratnākara*, p. 343.)

150. कात्यायन] गृहेषु मुषितं राजा चौरग्राहांस्तु दापयेत् ।
आरक्षकांस्तु दिक्पालान् यदि चौरो न लभ्यते ॥

150. When a theft has been committed in a house, and the thief is not detected, then the stolen property should be made good by the district officer, the police officers and the detectives.— (Kātyāyana in *Vivādaratnākara*, p. 343 ; and in *Vivādachintāmaṇi*, p. 147.)

151. याज्ञवल्क्य 2.271.] ग्रामेषु च भवेद्दोषो ग्रामभर्तुरवीक्षिते ।
विवीतभर्तुश्च पथि चौरधर्तुरवीतके ॥

151. If a murder or theft has been committed in a village, (and the criminal is not detected), the responsibility should lie with the owner of the village if it is proved that the thief has not left the village ; similarly, with the owner of the pasture-land ; if it has been committed outside the pasture-land, then the responsibility lies with the detectives set to catch the thief.—(Yajña. 2. 271 ; also Kātyāyana in *Vivādaratnākara*, p. 343 ; and in *Vivādachintāmaṇi*, p. 148.)

NOTES

'*Responsibility.*'—either to produce the thief, or to make good the stolen property.—'*If it is proved, etc.*'—*i.e.*, if the owner of the village or pasture-land succeed in proving that the thief has gone out from their jurisdiction ; then their responsibility ceases.—'*Outside the pasture-land,*'—*i. e.*, in the open fields.—(*Aparārka* and *Mitākṣarā*.)

152. याज्ञवल्क्य 2. 272.] स्वसीम्नि दद्यात् ग्रामस्तु पदं वा यत्र गच्छति ।
पञ्चग्रामी बहिःक्रोशात् दशग्राम्यथवा पुनः ॥

152. If a theft has occurred in the village, the stolen property shall be made good by the entire village, or by that village whereto the footprints left by the thief might lead. If the theft has occurred at a place which is more than two miles away from all villages, then the loss shall be made good by any five or ten villages that may be equidistant from the place.—(Yājña. 2. 272.)

153. नारद] गोचरे यस्य दृश्येत तेन चौरः प्रयत्नतः ।
मृग्यो वाऽप्यथ वा मोष्यं पदं यदि न निर्गतम् ॥
निर्गते तु पदे तस्मान्न चेदन्यत्र पातितम् ।
सामन्तान् मार्गपालांश्च दिक्पालांश्चैव दापयेत् ॥

153. That man under whose jurisdiction a theft has occurred should find out the thief or make good the loss,—if the footprints left by the thief are not found to proceed outside that jurisdiction ; if the footprints have gone out, then from that village to which they may be found to lead. If no foot-

prints are traceable, then all the neighbours and police-officers and executive officers are to be made to make good the loss.—(Nārada in *Aparārka*, p. 843 ; and in *Vivādaratnākara*, p. 344.)

154. विष्णु] चौरापहृतं द्रव्यं सर्वमेव सर्ववर्णेभ्यो दद्यात् । अनवाप्य स्वकोषादेव दद्यात् ॥

154. The king shall restore all the stolen property to the owners ; if he is unable to find it, he should make it good out of his own treasury.—(Viṣṇu in *Vivādaratnākara*, p. 345.)

155. गौतम] चौरहृतमवजित्य यथास्थानं गमयेत् । स्वकोषाद्वा दद्यात् ॥

155. The stolen property the king shall win back and restore to its place ; or, he may make it good out of his own treasury.—(Gautama in *Parāsharamādhava*, p. 306 ; and in *Mitākṣarā*, p. 272.)

156. कात्यायन] स्वदेशे यस्य यत् किञ्चित्हृतं देयं नृपेण तत् ।
गृह्णीयात्तत् स्वयं नष्टं प्राप्तमन्विष्य पार्थिवः ॥
चौरैर्हृतं प्रयत्नेन स्वरूपं प्रतिपादयेत् ।
तदभावे तु मूल्यं स्यादन्यथा किल्विषी नृपः ॥
लब्धेऽपि चौरे यदि तु मोषस्तस्मान्न लभ्यते ।
दद्यात् तमथ वा चौरं दापयेत्तु यथेष्टतः ॥

156. Whenever anything is stolen in the kingdom, the king himself shall make good the loss ; and on search, if the stolen property is found, the king shall take that for himself. He shall restore to the owner an article (as far as possible) like the one stolen. If that be not possible, he shall pay its price ; otherwise the king incurs sin.—If on the thief being detected, the stolen property is not found on him, the king shall make good the loss himself or make the thief do it.—(Kātyāyana in *Vivādaratnākara*, p. 345 ; and *Aparārka*, p. 844.)

157. वृद्धमनु] तस्मिंश्चेद्दाप्यमानानां भवेन्मोषे तु संशयः ।
मुषितः शपथैः शाप्यो बन्धुभिर्वा विशोधयेत् ॥

यस्मादपहृताल्लब्धं द्रव्यात्स्वल्पं तु स्वामिना ।
तच्छेषमाप्नुयात्तस्मात् प्रत्यये स्वामिना कृते ॥

157. When a man reports a theft to the king, at the time that the thieves are being compelled to make good the stolen property, if any doubt arises as to the exact nature of the property, the owner should be made to swear to it, or it should be proved by the evidence of his relatives ; after that, if a portion of the property is found with the thief detected, the rest of the property also should be realised from him, if the owner has fully established his case.—(Vṛddha-Manu in *Vivādaratnākara*, p. 345.)

158. याज्ञवल्क्य 2. 173.] शौल्किकैः स्थानपालैर्वा नष्टापहृतमाहृतम् ।
अर्वाक् संवत्सरात् स्वामी हरेत परतो नृपः ॥

158. When a stolen or lost property is brought to the king by a customs-officer or a police-officer, it shall be restored to the owner, if it is within a year of the theft ; if it is after a year, it shall remain with the king.—(Yājña. 2. 173.)

EXCEPTIONS TO ' THEFT '

159. मनु 8. 341.] द्विजोऽध्वगः क्षीणवृत्तिर्द्वाविक्षू द्वे च मूलके ।
आददानः परक्षेत्रान्न दण्डं दातुमर्हति ॥

159. If a twice-born person, running short of provisions while on a journey, takes two sugar-cane stalks, or two roots, from another man's field, he should not be punished.—(Manu, 8. 341.)

160. मनु 8. 339.] वानस्पत्यं मूलफलं दार्वग्न्यर्थं तथैव च ।
तृणं च गोभ्यो ग्रासार्थमस्तेयं मनुरब्रवीत् ॥

160. Fuel, fire, trees, roots, fruits, grass for feeding cows,—the taking of these is not ' theft.'—(Manu, 8. 339.)

161. मनु (?)] चणकव्रीहिगोधूमयवानां मुद्गमाषयोः ।
अनिषिद्धैर्ग्रहीतव्या मुष्टिरेका पथि स्थितैः ॥

161. Grain, *Vrīhi*, wheat, barley, *Mudga*, *Māṣa*,—of these a handful may be taken by men journeying by the road, if

they are not forbidden by anyone.—(Manu in *Vīramitrodaya*, p. 497.)

162. याज्ञवल्क्य 32. 33.] प्रणष्टाधिगतं देयं नृपेण धनिने धनम् ।
विभावयेन्न चेल्लिङ्गैस्तत्समं दण्डमर्हति ॥

162. In the case of the finding (by the king or his officers) of property lost (on the public road, or near the Customs House and such places) if the owner comes to claim it, it should be given to him (if he proves his ownership by its description) ; if he fails to prove it, he should be fined the amount of its value.—(Yājña. 2. 335 ; Manu, 8. 32-33.)

(See under Chap. III, Procedure, Sec. 167.)

NOTES FROM ARTHASHĀSTRA

(*a*) If a person claims a property that has been lost and found, if he establishes his ownership, he shall obtain it ; if he fails to establish his ownership, he shall pay as fine the fifth part of the value of the property, and the property shall rest with the king.—(*Arthashāstra*, 3. 16.)

(*b*) If a property has been lost and found, if the owner takes it without reporting it to the king, he shall be fined 250 *Paṇas*.—(*Arthashāstra*, 3. 16.)

(*c*) If a lost property is found at the Customs House, it shall remain there for a month and a half ; if a claimant does not turn up till then, it shall become escheated to the king ; or it may be given to the owner if he establishes his ownership.—(*Arthashāstra*, 3. 16.)

(*d*) If it is a slave that has been lost and found, the owner shall pay a fee of 5 *Paṇas* per head before he is restored to him ;—if it is a single-hoofed animal, 4 *Paṇas* ;—if it is a cow or a buffalo, 2 *Paṇas* ; If a small animal, a quarter *Paṇa* ; –if it is a jewel, on some metal substance other than gold or silver, then the fee payable shall be 5 per cent of its value.—(*Arthashāstra*, 3. 16.)

(*e*) If the property had been taken away by a foreigner or by a robber, the king shall have it brought back and made over to the rightful owner.—What has been stolen by thieves, the king shall make good out of his own treasury, if it is not traceable, or if he is unable to have it restored.

(*f*) In cases where a Hermit, or a Renunciate or a Religious student, has rendered himself liable to a fine,—he will keep a fast or perform a bath or tend fire or perform expiatory penances, for as many days as the number of *Paṇas* prescribed as the fine to which they have become liable.—Similarly the ascetics of heretical sects, being without any gold or silver, shall make up for fines by fasts and penances.—But this does not refer to cases of Defamation, Assault, Theft, Serious Crimes or Adultery.—(*Arthashāstra*, 3. 16.)

CHAPTER XVIII

ADULTERY

DEFINITIONS

1. बृहस्पति 23. 2—5.] पापमूलं सङ्ग्रहणं त्रिराकारं निबोधत ।
बलोपाधिकृते द्वे तु तृतीयमनुरागजम् ॥
अनिच्छन्त्या यत् क्रियते सुप्तोन्मत्तप्रमत्तया ।
प्रलपन्त्या वा रहसि बलात्कारकृतं तु तत् ॥
छद्मना गृहमानीय गत्वा वा तस्त्वसद्मनि ।
संयोगः क्रियते यस्याः तदुपाधिकृतं विदुः ॥
अन्योन्यचक्षूरागेण दूतीसम्प्रेषणेन च ।
कृतं रूपावलोकेन ज्ञेयं तदनुरागजम् ॥

1. There are three kinds of Adultery : (*a*) by force ; (*b*) by deception ; and (*c*) through sensual desire.—(*a*) When a man has intercourse with a woman in secret against her will, when she is asleep, or intoxicated or unconscious, or crying for help, it is said to be *by force*.—(*b*) When he conducts her to his house, or himself goes to her house, under false pretences, and has intercourse with her,—it is said to be *by deception*.—(*c*) When a man exchanging amorous glances with a woman, also messages through go-betweens,—has intercourse with her impelled by sensuality, it is *through sensual desire*.—(Bṛhaspati, 23. 2—5 ; in *Vivādaratnākara*, pp. 378-379 ; *Vīramitrodaya*, p. 504 ; and *Aparārka*, p. 754.)

NOTES

Throughout this chapter the term ' woman ' stands for a woman *other than one's own wife*.

2. व्यास] संग्रहस्त्रिविधो ज्ञेयः प्रथमो मध्यमस्तथा ।
उत्तमश्चेति शास्त्रेषु तस्योक्तं लक्षणं पृथक् ॥

अदेशकाले सम्भाष्य अरण्ये च परस्त्रियाः ।
अपाङ्गप्रेक्षणं हास्यं प्रथमः संग्रहः स्मृतः ॥

2. Adultery has been classed under three classes—of the first degree, of the second degree and of the highest degree.—(bad, worse and worst).—When a man meeting a woman in a solitary place and at an improper time converses with her, casting amorous glances and smiles at her, it is Adultery of the 'first degree.'—(Vyāsa in *Vivādaratnākara*, p. 379; *Vivādachintāmaṇi*, p. 170; and in *Vīramitrodaya*, p. 506.)

3. बृहस्पति 23. 6.] अपाङ्गप्रेक्षणं हास्यं दूतीसम्प्रेषणं तथा ।
स्पर्शो भूषणवस्त्राणां प्रथमः संग्रहः स्मृतः ॥

3. Casting amorous glances at a woman, smiling at her, sending messengers to her, touching her ornaments or clothes,—these constitute adultery of the first degree.—(Bṛhaspati, 23. 6; in *Vivādaratnākara*, p. 379; *Vivādachintāmaṇi*, p. 170; and in *Vīramitrodaya*, p. 505.)

4. नारद] परस्त्रिया सहाकाले अदेशे पुरुषस्य तु ।
स्थानसम्भाषणामोदास्त्रयः संग्रहणक्रमाः ॥
नदीनां सङ्गमे तीर्थेष्वारामेषु वनेषु च ।
स्त्रीपुंसौ यत् समेयातां तच्च संग्रहणं स्मृतम् ॥
दूतीसम्प्रेषणैर्वापि लेखसम्प्रेषणैरपि ।
अन्यैर्वापि व्यभीचारैराद्यं संग्रहणं स्मृतम् ॥

4. A man sitting, conversing or dallying with a woman at an improper time and place,—these constitute the three forms of Adultery.—When a man and a woman meet each other at the confluence of rivers, or at a place of pilgrimage, or in a garden or in a forest,—this also is Adultery. Sending of messengers or letters, or committing other improprieties constitute Adultery of the first degree.—(Nārada in *Vivādaratnākara*, p. 380; in *Vivādachintāmaṇi*, p. 170.)

NOTES

'*Improper time*,'—*e.g.*, night.—'*Improper place*,'—*i.e.*, a solitary place.—(*Vivādaratnākara*.)

When conversation is entered into, either through ignorance, or through anxiety, or with an intention which is not immoral,—it is not 'Adultery.'—(*Vivādachintāmaṇi.*)

5. मनु 8. 356.] परस्त्रियं योऽभिवदेत् तीर्थेऽरण्ये वनेऽपि वा ।
नदीनां वाऽपि सम्भेदे स संग्रहणमाप्नुयात् ॥

5. If a man converses with a woman at a watering place or in a wilderness, or in a forest, or at the confluence of rivers—he incurs the guilt of adultery.—(Manu, 8. 356.)

6. बृहस्पति 23. 7.] प्रेषणं गन्धमाल्यानां फलमद्यान्नवाससाम् ।
सम्भाषणं च रहसि मध्यमं संग्रहं विदुः ॥

6. Sending to a woman perfumes, garlands, fruits, wines, food or clothes, and conversing with her in secret, is Adultery of the second degree.—(Bṛhaspati, 23. 7; in *Vivādaratnākara*, p. 380; *Vivādachintāmaṇi*, p. 170; and *Vīramitrodaya*, p. 505.)

7. व्यास] प्रेषणं गन्धमाल्यानां धूपभूषणवाससाम् ।
सम्भाषणं च रहसि मध्यमं संग्रहं विदुः ॥

7. Sending perfumes and garlands, incense, ornaments and clothes, also tempting her with foods and drinks, constitute Adultery of the second degree.—(Vyāsa in *Vivādaratnākara*, p. 380; but Bṛhaspati in *Vivādachintāmaṇi*, p. 171.)

8. बृहस्पति 23. 8.] एकशय्यासनं क्रीडा चुम्बनालिङ्गने तथा ।
एतत् संग्रहणं प्रोक्तमुत्तमं शास्त्रवेदिभिः ॥

8. Sitting on the same bed, dallying, kissing and embracing,—all this constitutes adultery of the highest degree.—(Bṛhaspati, 23. 8; in *Vivādaratnākara*, p. 380; *Vivādachintāmaṇi*, p. 171; and *Vīramitrodaya*, p. 505.)

9. व्यास] शय्यासने विविक्ते तु परस्परमपाश्रयः ।
केशाकेशिग्रहश्चैव ज्ञेय उत्तमसंग्रहः ॥

9. When a man and a woman sit on the same bed or seat leaning upon each other and catching hold of each other's hair,—this is Adultery of the highest degree.—(Vyāsa in *Vivādaratnākara*, p. 380.)

10. मनु 8. 357-358.] उपकारक्रिया केलिः स्पर्शो भूषणवाससाम् ।
सह खट्वासनं चैव सर्वं संग्रहणं स्मृतम् ॥
स्त्रियं स्पृशेददेशे यः स्पृष्टो वा मर्षयेत्तथा ।
परस्परस्यानुमते सर्वं संग्रहणं स्मृतम् ॥

10. Offering help, flirting, touching of ornaments and clothes, sitting on the same bed,—all this is Adultery.—If a man touches a woman in an improper place,—or condones it when touched by her,—all this when done with mutual consent, constitutes Adultery.—(Manu, 8. 357-358.)

NOTES

'*Flirting*'—'joking by means of words conveying hidden suggestions.—'*sitting on the same bed*'—even without actually touching.—'*ornaments*'—while worn by her, or even held by others, if he touches them without any reason, simply because it belongs to that particular lady.—'*offering of help*'—in the shape of presents of clothes and garlands, or articles of food and drink and other things, to a lady who is not related to him.—'*Improper place*,'—for touching, would be one when the man could pass along without touching the woman; there would be no harm in large crowds; or 'place' may stand for *part of the body*; and the chin or breasts or lips would be 'improper place' to touch.—'*condones*'—does not resent.—'*with mutual consent*'—the act is wrong only when done intentionally.—(*Medhātithi.*)

11. नारद] दर्पाद्वा यदि वा मोहात् श्लाघया वा स्वयं वदेत् ।
पूर्वं मयेयं भुक्तेति तच्च संग्रहणं स्मृतम् ॥

11. If through arrogance, or stupidity, or vauntingly, a man were to say 'I have enjoyed her before,'—this would be Adultery.—(Nārada in *Vivādaratnākara*, p. 381; and in *Vīramitrodaya*, p. 506.)

12. नारद] पाणौ यश्चापि गृह्णीयात् वेश्यां वस्त्राञ्चलेऽपि वा ।
तिष्ठ तिष्ठेति वा ब्रूयात् सर्वं संग्रहणं स्मृतम् ॥

12. If a man touches either the hand or the hair of woman (*lit.* prostitute), or her clothes,—or says to her 'stay, stay please';—all this constitutes Adultery.—(Nārada in *Vivādaratnākara*, p. 381; *Vivādachintāmaṇi*, p. 17; *Vīramitrodaya*, p. 506.)

13. याज्ञवल्क्य 2. 283-284.] पुमान् संग्रहणे ग्राह्यः केशाकेशि परस्त्रिया ।
सद्यो वा कामजैश्चिह्नैः प्रतिपत्तौ द्वयोस्तथा ॥
नीवीस्तनप्रावरणमूरुकेशावकर्षणम् ।
अदेशकालसम्भाषं सहावस्थानमेव च ॥

13. A man is to be arrested for Adultery if he is found with a woman—each holding the other's hair, or when he bears on his body visible signs of dalliance, or when both of them confess to it ;—also if he is found to be pulling her cloth-knot, or the cloth over her breasts,—or her thighs or hair, or conversing with her at an improper time and place, or sitting with her.—(Yājña. 2. 283-284.)

NOTES

A man is to be regarded as an 'adulterer' if he is seen with the woman each holding the other's hair, or if he bears on his body visible signs of embrace,—or if the woman declares it.—(*Arthashāstra*, 4. 12.)

14. कात्यायन] यानि कर्माण्यभिलषन् पुमान् वै कुरुते क्वचित् ।
आरम्भास्ते तु निर्दिष्टा गर्हिताः कामसाधकाः ॥

14. Whatever act a man does with the intention of having intercourse with a woman is to be regarded as Adultery.—(Kātyāyana in *Vivādaratnākara*, p. 382.)

NOTES

If any one charges a man of Adultery without any of these, the accuser should be fined.—(*Vivādaratnākara.*)

15. कात्यायन] गर्भपातो नखानां च दंशनं गर्भधारणम् ।
एभिश्चिह्नैः सदा ज्ञेया व्यभिचाररताः स्त्रियः ॥

15. If a woman has recourse to abortion, or bears nail-marks on her body, or becomes pregnant,—she is to be regarded as having misbehaved.—(Kātyāyana in *Vivādaratnākara*, p. 382.)

PENALTY FOR FLIRTING

16. कात्यायन] सर्वेषु चापराधेषु पुंसोऽर्थदमस्तथा ।
तदर्धं योषितो दद्युर्वधे पुंसोऽङ्गकर्तनम् ॥

16. In all cases, the fine payable by the woman is to be half of that prescribed for the man ; in cases where the penalty prescribed for the man is death, the woman should have her limbs cut off.—(Kātyāyana in *Vīramitrodaya*, p. 507.)

17. बृहस्पति 23.9.] त्रयाणामपि चैतेषां प्रथमो मध्य उत्तमः ।
विनयः कल्पनीयः स्याद्धिको द्रविणाधिके ॥

17. For the three gradations of Adultery, the first, middling and highest fines respectively shall be inflicted ; there may be heavier fines if the culprit is a wealthy person.—(Bṛhaspati, 23. 9 ; in *Vivādaratnākara*, p. 384; *Vivādachintāmaṇi*, p. 172 ; and in *Vīramitrodaya*, p. 506.)

18. मनु 352.] परदाराभिमर्षेषु प्रवृत्तान् नन् महीपतिः ।
उद्वेजनकरैर्दण्डैश्चिह्नयित्वा प्रवासयेत् ॥

18. Those men who are addicted to intercourse with the wives of other men,—the king shall banish, after having branded them with terror-inspiring punishments.—(Manu, 8. 352.)

NOTES

'*Intercourse*'—stands for *carnal enjoyment*, consisting in *embracing* and such acts as the cultivating of pleasure by mutual union, the sending of messengers and so forth, and the actual sexual act. What the text means is that 'when the king has found out that a certain man is addicted to having intercourse with women, he should brand him—by cutting off his nose, for instance, and then banish him.'—This refers not to any single act, but to repeated acts,—and the right thing appears to be that the 'branding' here prescribed should be accompanied by a monetary fine also.—(*Medhātithi.*)

19. मनु 8. 354-355.] परस्य पत्न्या पुरुषः सम्भाषां योजयन् सह ।
पूर्वमाचारितो दोषैः प्राप्नुयात् पूर्वसाहसम् ॥
यस्त्वनाचारितः पूर्वमभिभाषेत कारणात् ।
न दोषं प्राप्नुयात् किञ्चित् न हि तस्य व्यतिक्रमः ॥

19. A man who engages in secret conversation with a woman,—if he is one who has been previously accused of similar offence,—should suffer the penalty of the first amercement.—If, however, he is one who has not been previously accused,—and converses with her for some good reason, he does not incur any guilt.—(Manu, 8. 354-355.)

NOTES

'*Similar offence*'—*i.e.*, of carrying on a love-intrigue with the same woman.—Even though not previously accused, if he converses with the woman without any business, he becomes liable to punishment.—(*Medhātithi.*)

20. आपस्तम्ब] अबुद्धिपूर्वमलंकृतो युवा परदारेषु प्रविशन् कुमारीं
वाचा बाध्यः। बुद्धिपूर्वं तु दण्ड्यः ।

20. If a young man, having adorned himself, approaches a woman or a maiden, unintentionally, and without any evil intent, he shall be reprimanded; if he does it intentionally, (and with evil intent) he shall be punished.—(Āpastamba in *Vivādaratnākara*, p. 385; Shaṅkha-Likhita in *Aparārka*, p. 855.)

NOTES

'*Reprimanded.*—By the reading adopted by *Aparārka*, the meaning is that he is *not to be blamed*. We have adopted the reading of *Vivādaratnākara*.

'*Punished.*'—According to his means.

21. मत्स्यपुराण] भिक्षुकोऽप्यथवा नारीं योऽपि स्यात्तु कुशीलवः।
प्रविशेत् प्रतिषिद्धस्तु प्राप्नुयात् पूर्वसाहसम् ॥

21. If a beggar or an actor, after being forbidden, enter the women's apartments, he should suffer the first amercement.—(Matsyapurāna in *Vivādaratnākara*, p. 385.)

22. मत्स्यपुराण] यस्तु सञ्चारकस्तत्र पुरुषः स तथा भवेत्।
पारदारिकवद् दण्ड्यो यश्च स्यादवकाशदः ॥

22. A man who helps a man and a woman to meet, and he who provides the place for their meeting, should be punished

like the adulterer himself.—(Matsyapurāṇa in *Vivādaratnākara*, p. 385; in *Vivādachintāmaṇi*, p. 174; in *Aparārka*, p. 856.)

NOTES

One who abets or provides room for Adultery shall suffer the same punishment as the man who committed the crime.—(*Arthashāstra*, 4. 12.)

23. नारद] नाथवत्या परगृहे संयुक्तस्य स्त्रिया सह ।
दुष्टं संग्रहणं तज्ज्ञैर्नागतायाः स्वयंगृहे ॥

23. Adultery with a protected woman met within another man's house is punishable; not when the woman has herself come to the house of the accused and made advances to him.—(Nārada in *Vivādaratnākara*, p. 385; *Vivādachintāmaṇi*, p. 175.)

24. विष्णु] स्वयमेवागतायां तु स्वगृहे न तु दोषभाक् ।

24. If the woman of her own accord has come to the man, the latter is not liable to punishment.—(Viṣṇu in *Vivādaratnākara*, pp. 385-386; and in *Vivādachintāmaṇi*, p. 175.)

25. विष्णु] अदुष्टत्यक्तदारस्य क्लीबस्याक्षमकस्य च ।
स्वेच्छानुपेयुषो दारान् न दोषः साहसे भवेत् ॥

25. The wife of a man who has abandoned her without fault, the wife of one who is impotent or afflicted with consumption,—one who has intercourse with such woman coming to him of her own accord, is not liable to punishment.—(Viṣṇu in *Vivādaratnākara*, p. 386; and in *Vivādachintāmaṇi*, p. 175.)

26. मनु 8. 360.] भिक्षुका वन्दिनश्चैव दीक्षिताः कारवस्तथा ।
सम्भाषणं सह स्त्रीभिः कुर्युरप्रतिवारिताः ॥

26. Mendicants, bards, persons initiated for a rite, and craftsmen may converse with women unchecked.—(Manu, 8. 360.)

27. मनु 8. 361.] न सम्भाषां परस्त्रीभिः प्रतिषिद्धः समाचरेत् ।
निषिद्धो भाषमाणस्तु सुवर्णं दण्डमर्हति ॥

27. One should not converse with women, when forbidden. If, on being forbidden, he does converse, he should be fined one '*suvarṇa.*'—(Manu, 8. 361.)

NOTES

Some people think that the punishment here prescribed is meant for the case where mendicants and the rest carry on the conversation, even when forbidden. This is not right. The person meant to be fined is one who has been forbidden by the woman's husband, and yet goes on conversing with her.—(*Medhātithi.*)

28. मनु 8. 362-363.] नैष चारणदारेषु विधिर्नात्मोपजीविषु ।
किञ्चिदेव तु दाप्यः स्यात् सम्भाषां ताभिराचरन् ॥
प्रैष्यासु चैकभुक्तासु रहः प्रव्रजितासु च ।

28. The above rule does not apply to the case of the wives of dancers and singers, or of those who make a living by their wives.—Yet he who secretly carries on conversation with these women, or with slave-girls devoted to one master, or with female ascetics, should be made to pay some small fine.—(Manu, 8. 362-363.)

NOTES

'*Some small fine.*'—The thirtieth part of a '*Suvarṇa*' or some such thing,—the exact fine being determined in accordance with circumstances attending each case.—(*Medhātithi.*)

29. याज्ञवल्क्य 2. 285.] स्त्री निषेधे शतं दण्ड्या द्विशतं तु दमं पुमान् ।
प्रतिषेधे तयोर्दण्डो यथा संग्रहणे तथा ॥

29. For conversing with a man, conversation with whom has been forbidden by her father or husband, a woman should be fined one hundred; and the man, two hundred. If both of them have been forbidden, and yet keep on their conversation, both should be fined as for Adultery.—(Yājña. 2. 285.)

NOTES

'*As for adultery*'—*i.e.*, the first amercement.—(*Vivādachintāmaṇi*, p. 173.)

30. शंखलिखित] येन येनाङ्गेनापराधं कुर्यात् तत् तस्य छेत्तव्यम् ।
अष्टसहस्रं वा दण्ड्यः । अन्यत्र ब्राह्मणात् ॥

30. By whatever limb a man misbehaves with a woman, that limb should be cut off, or a fine of 'eight and thousand' imposed; except in the case of a Brāhmaṇa.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 387.)

PENALTY FOR SEXUAL INTERCOURSE

31. बृहस्पति 23. 10.] सहसा कामयेद्यस्तु धनं तस्याखिलं हरेत् ।
उत्कृत्य लिङ्गवृषणौ भ्रामयेद् गर्दभेन तु ॥

31. If a man violates an unwilling woman by force, the king shall confiscate his entire property, and after having cut off his penis and scrotum, shall have him paraded on an ass.—(Bṛhaspati, 23. 10; in *Vivādaratnākara*, p. 388.)

32. बृहस्पति 23.11.] छद्मना कामयेद्यस्तु तस्य सर्वहरो दमः ।
अङ्कयित्वा भगाङ्केन पुरान्निर्वासयेत्ततः ॥

32. When a man enjoys an unwilling woman by fraud, his punishment shall be confiscation of his entire property, and he shall be branded with the sign of the female organ and banished.—(Bṛhaspati, 23. 11; in *Vivādaratnākara*, p. 388.)

NOTES

'*A woman*'—'unwilling.'—(*Vivādaratnākara*, p. 388.)

This refers to cases where both the man and the woman belong to the same caste. If the woman is of lower caste, the punishment shall be lighter; and if she belongs to a superior caste, heavier, even ending in death.—(*Vīramitrodaya*, p. 506.)

If the woman is a Shūdra, the man shall suffer the middle amercement and the woman's hair, ear and nose shall be cut off.—(*Vivādachintāmaṇi*, p. 183.)

33. बृहस्पति 23. 12.] दमोऽन्तिमः समायां तु हीनायामधिकस्ततः ।
पुंसः कार्योऽधिकायां तु गमने सम्प्रमापणम् ॥

33. If a man has intercourse with a woman of equal caste, he shall suffer the highest amercement; if with a

woman of inferior caste, half of that; but a man having intercourse with a woman of higher caste shall be put to death.—(Bṛhaspati, 23.12; in *Vivādaratnākara*, p. 388.)

NOTES

This refers to cases where no force or fraud has been used and the intrigue has been carried on through go-betweens.—(*Vivādaratnākara*.)

34. आपस्तम्ब] सन्निपाते वृत्ते शिश्नस्य छेदनं सवृषणस्य ॥

34. If sexual intercourse has been completed, the man's penis and scrotum should be cut off.—(Āpastamba in *Vivādaratnākara*, p. 389.)

35. कात्यायन] स्त्रीषु वृत्तोपभोगः स्यात् प्रसह्य पुरुषो यदा ।
वधस्तत्र प्रवर्तेत ।

35. When a man has enjoyed a woman by force, he should suffer death.—(Kātyāyana in *Vivādaratnākara*, p. 389.)

NOTES

'*Woman*'- of superior caste.—(*Vivādaratnākara*.)

36. मनु 8. 379.] मौण्ड्यं प्राणान्तिको दण्डो ब्राह्मणस्य विधीयते ।
इतरेषां तु वर्णानां दण्डः प्राणान्तिको भवेत् ॥

36. In cases where the death-penalty is prescribed, it shall be 'Tonsure' for the Brāhmaṇa and actual death for others.—(Manu, 8. 379.)

37. याज्ञवल्क्य 2. 286.] सजातावुत्तमो दण्ड आनुलोम्ये तु मध्यमः ।
प्रातिलोम्ये वधः पुंसो नार्याः कर्णादिकर्तनम् ॥

37. For intercourse with a woman of the same caste, the man shall suffer the highest amercement; if the woman is of an inferior caste, the middle amercement; if she belongs to a higher caste, the man shall suffer death, and of the woman, the ear and other limbs shall be cut off.—(Yājña. 2. 286.)

NOTES

This refers to cases of forcible intercourse with a 'protected' woman.—(*Aparārka, Parāsharamādhava*, p. 317 and *Viramitrodaya*, p. 508.)

38. विष्णु] पारजायी सवर्णागमने तूत्तमसाहसं दण्ड्यः। हीनवर्णागमने मध्यमम्। गोगमने चान्त्यागमने च वधः—उत्तमागमने च।

38. An adulterer having intercourse with a woman of equal caste shall suffer the highest amercement; with a woman of a lower caste, the middle amercement; with a woman of the highest caste, or with an untouchable woman, or with a cow—the penalty shall be death.—(Viṣṇu in *Vivādaratnākara*, p. 390; and in *Vivādachintāmaṇi*, p. 183.)

39. शङ्खलिखित] अनिवेदितप्रवेशे तत्रोत्तममुत्तमायाम्। विपर्यये मध्यमसाहसम्। प्रतिलोमैकान्तरावस्कन्दने सर्वस्वं वधो वा। विपर्यये सन्निरोधः सर्वस्वं वा॥

39. If a Brāhmaṇa, entering the house without permission, has intercourse with a Brāhmaṇa woman, he shall suffer the highest amercement.—If a Brāhmaṇa has intercourse with a woman of a low caste, he shall suffer the middle amercement.—If a man of an inferior caste has intercourse with a woman of the next higher caste, he shall suffer death and his entire property also shall be confiscated.—If a man of a superior caste has intercourse with a woman of the next lower caste, he shall suffer imprisonment and also confiscation of his entire property.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 390.)

40. मनु 8. 371-372.] भर्तारं लंघयेद्या तु स्त्री ज्ञातिगुणदर्पिता।
तां श्वभिः खादयेद्राजा संस्थाने बहुसंस्थिते॥
पुमांसं दाहयेत्पापं शयने तप्त आयसे।
अभ्यादध्युश्च काष्ठानि तत्र दह्येत पापकृत्॥

40. If a woman, proud of relations and qualities, passes over her husband,—the king shall have her devoured by dogs in a frequented place.—The offending male shall be made to lie

down upon a red-hot iron-bed ; they shall put wooden logs over him, so that the sinner may be burnt.—(Manu, 8. 371-372.)

NOTES

This refers to cases due to sheer audacity.—*Vivādaratnākara*, p. 391.)

41. नारद] माता मातृष्वसा श्वश्रूर्मातुलानी पितृष्वसा ।
पितृव्यसखिशिष्यस्त्री भगिनी तत्सखी स्नुषा ॥
दुहिताऽऽचार्यभार्या च सगोत्रा शरणागता ।
राज्ञी प्रव्रजिता साध्वी धात्री वर्णोत्तमा च या ॥
आसामन्यतमां गत्वा गुरुतल्पग उच्यते ।
शिश्नस्योत्कर्तनात् तत्र नान्यो दण्डो विधीयते ॥

41. Mother, mother's sister, mother-in-law, maternal aunt, father's sister, aunt, friend's wife, pupil's wife, sister, sister's friend, daughter-in-law, daughter, teacher's wife, a *Sagotra* woman, a woman refugee, queen, a female mendicant, a nurse belonging to high caste ;—if a man has intercourse with anyone of these, he is to be regarded as 'a violator of the teacher's bed,' and the only punishment for him would be the cutting off of his penis.—(Nārada in *Vivādaratnākara*, p. 392 ; in *Vivādachintāmaṇi*, p. 184 ; and in *Vīramitrodaya*, p. 507.)

NOTES

The term 'mother' here stands for a wife of the father's, other than one's own mother ; (the penalty in the latter case being nothing short of death).—(*Vivādaratnākara*, p. 392.)

Says Viṣṇu:—'Sexual connection with one's mother, daughter, or daughter-in-law is a crime of the highest degree.—Those who commit such a crime should proceed into the flames ; there is no other way to atone for the crime.—(Viṣṇu, 34. 1-2.)

Father's sister, mother's sister, maternal uncle's wife, teacher's wife, daughter-in-law, daughter, sister,—if a man has intercourse with anyone of these his penis and scrotum shall be cut off and he shall be put to death.—If the woman had been willing, she shall suffer the same punishment ; as also the woman who allows herself to be approached by a servant or a slave.—(*Arthashāstra*, 4. 13.)

42. याज्ञवल्क्य 3. 232.] पितुः स्वसारं मातुश्च मातुलानीं स्नुषामपि ।
मातुः सपत्नीं भगिनीमाचार्यतनयां तथा ॥

आचार्यपत्नीं स्वसुतां गच्छंश्च गुरुतल्पगः ।
लिङ्गं छित्वा वधस्तस्य सकामायाः स्त्रियास्तथा ॥

42. Father's sister, mother's sister, maternal aunt, daughter-in-law, step-mother, sister, teacher's daughter, teacher's wife, one's own daughter – a man having connection with anyone of these is 'a violator of the teacher's bed'; his penis should be cut off and he should be put to death;—also of the woman if she had been incited with lust.—(Yājña. 3. 232.)

43. व्यास] गुप्तायाः संग्रहे दण्डो यथोक्तः परिकीर्तितः ।
इच्छन्त्यामागतायां तु गच्छतोऽर्धंदमः स्मृतः ॥

43. If a woman has come to a man of her own accord, the man having connection with her shall be punished with a fine that should be half of the amount prescribed for connection with a 'protected woman.'—(Vyāsa in *Vivādaratnākara*, p. 392.)

NOTES

'*Amount prescribed*'—That is, 'the highest amercement' 1000 *Paṇas*. No penalty shall be inflicted if the woman is one whose husband is impotent or otherwise incompetent.—(*Vivādaratnākara.*)

44. मनु 8. 378.] सहस्रं ब्राह्मणो दण्ड्यो गुप्तां विप्रां बलाद् व्रजन् ।
शतानि पञ्च दण्ड्यः स्यादिच्छन्त्या सह सङ्गतः ॥

44. The Brāhmaṇa having intercourse with a protected Brāhmaṇa woman by force should be fined one thousand; he who has connection with a willing one should be fined five hundred.—(Manu, 8. 378.)

NOTES

Even though the woman may have lost her chastity, if she continues to be protected by her father, brother or other relatives,—and a Brāhmaṇa has intercourse with her by force,—he should be made to pay 1000.—If however the woman is protected and still chaste, the man shall pay the fine 1,000 and shall also be branded and banished.—(*Medhātithi.*)

If a Kṣattriya approaches a protected Brāhmaṇa woman, he shall be fined 1000; if a Vaishya does it, his entire property shall be confiscated;—if a Shūdra does it, he shall be burnt in straw-fire.—In all cases if a man approaches the king's wife, be shall be fried to death—(*Arthashāstra*, 4 13.)

45. मनु 8. 382.] वैश्यश्चेत् क्षत्रियां गुप्तां वैश्यां वा क्षत्रियो व्रजेत् ।
यो ब्राह्मण्यामगुप्तायां तावुभौ दण्डमर्हतः ॥

45. If a Vaishya approaches a protected Kṣattriya woman,—or a Kṣattriya a Vaishya woman,—both these deserve the same punishment as that in the case of the unprotected Brāhmaṇa woman (*i.e.*, the Kṣattriya is to be fined 1,000 and the Vaishya 500).—(Manu, 8. 382.)

NOTES

'*The same punishment, etc.*'—as laid down in Manu, 8. 376.—The heavier punishment for the Kṣattriya is justified on the ground that, being entrusted with the task of protecting the people, if he takes to offending against them, he incurs a great sin.—(*Medhātithi.*) But *Vivādachintāmaṇi* (p.181) explains the apparent incongruity by the remark that it refers to cases where the Vaishya is a highly qualified person and the Kṣattriya is an ordinary person without any qualifications; in other cases, they are both to be fined 1,000.

46. मनु 8. 383.] सहस्रं ब्राह्मणो दण्डं दाप्यो गुप्ते तु ते व्रजन् ।
शूद्रायां क्षत्रियविशोः साहस्रो वै भवेद्दमः ॥

46. The Brāhmaṇa, having intercourse with a protected Kṣattriya or protected Vaishya woman, should be fined 1,000.—A Kṣattriya or a Vaishya approaching a Shūdra woman should be fined 1,000.—(Manu, 8. 383.)

NOTES

This refers to cases where the woman is other than the wife of the teacher, or of a friend.—(*Mitākṣarā*, 2. 286 and *Vīramitrodaya*, p. 507.)

47. आपस्तम्ब] नाश्य आर्यः शूद्रायाम् ।

47. The '*Arya*' having intercourse with a Shūdra woman should be demolished.—(Āpastamba in *Vivādaratnākara*, p. 393; and in *Vivādachintāmaṇi*, p. 184.)

NOTES

'*Ārya*'—Brāhmaṇa, Kṣattriya and Vaishya (*Vivādaratnākara*);—Brāhmaṇa (*Vivādachintāmaṇi*).

'*Demolished*'—*i.e.*, banished (*Vivādaratnākara.*)

This refers to cases where the Shūdra woman has not had previous intercourse with any man.—(*Vivādaratnākara.*)

48. मनु 8. 385.] अगुप्ते क्षत्रियावैश्ये शूद्रां वा ब्राह्मणो व्रजन् ।
शतानि पञ्च दण्ड्यः स्यात् सहस्रं त्वन्त्यजस्त्रियम् ॥

48. The Brāhmaṇa approaching an unprotected Kṣattriyā or Vaishya or a Shūdra woman should be fined 500 ; and 1,000, if he approaches a woman of the lowest order.—(Manu, 8. 385.)

NOTES

'*Of the lowest order*,'—*i.e.*, the *Chaṇḍāla* and the like, says *Medhātithi* ;—washerwoman, the wife of the worker in leather and so forth—says *Vivādachintāmaṇi* (p. 178).

The law on this point may be summed up as follows :—For the Brāhmaṇa approaching a protected woman of any of the four castes, the fine shall be 1,000 ; and in addition to this, for having intercourse with the wife of a Vedic Scholar, there shall be both banishment and branding ; while in other cases there shall be banishment only ;—for intercourse with an unprotected woman, the fine shall be 500, in addition to branding and banishment ;—for the non-Brāhmaṇa, the penalty is death, for approaching by force any protected woman ;—for approaching a willing woman, he shall be fined 1,000 and also be branded and banished.—Though the 'unprotected' woman may be regarded as 'another man's wife' by reason of her having undergone the marriage-rites, yet, in reality, when she has become loose in character, she practically ceases to be her husband's 'wife.'—(*Medhātithi.*)

49. मनु 8. 373.] संवत्सराभिशस्तस्य दुष्टस्य द्विगुणो दमः ।
व्रात्यया सह संवासे चाण्डाल्या तावदेव तु ॥

49. If a man convicted of and punished for adultery with a woman commits the same crime again with the same woman within a year, his fine shall be double. In the case of his (repeated) intercourse with a '*vrātyā*' the fine shall be the same as that in the case of the *Chaṇḍālī*.—(Manu, 8. 373.)

NOTES

'*Vrātyā*'—The unchaste woman who has had intercourse with several men,—or the village slave-girl who has several masters.—(*Medhātithi*). 'A girl who has remained unmarried till after the age prescribed for marriage (Halāyudha quoted in *Vivādaratnākara*, p. 394). This meaning has been discussed and rejected by Medhātithi. [The second line of the text has been rendered according to the interpretation by Medhātithi. As the words stand, the meaning is—'So also in the case of this intercourse with a Vrātyā and a Chaṇḍālī.']

50. याज्ञवल्क्य 2. 293.] अन्त्याभिगमने त्वाङ्क्य कबन्धेन प्रवासयेत् ।

50. If a twice-born person has recourse to a Chaṇḍāla woman, he should be branded with an ugly mark and banished.—(Yājña. 2. 293.)

NOTES

This refers to the twice-born person who has committed the adultery and is *unwilling to perform the prescribed expiatory penance*; in addition to the punishment here laid down, the man should also be fined 1,000;—the 'ugly mark' is the sign of the female organ.—*If the man is prepared to perform the expiatory penance*, he shall be only fined 1,000.—(*Mitākṣarā*.)

51. याज्ञवल्क्य 2. 293.] शूद्रस्तथाङ्क्य एव स्यात् ।

51. The Shūdra having recourse to a Chaṇḍāla woman shall be branded only.—(Yājña. 2. 293.)

NOTES

'*Branded only*'—This is the reading adopted by *Aparārka*. *Mitākṣarā* has adopted the reading '*antya*' for '*ankya*' which means 'becomes a Chaṇḍāla.'

52. याज्ञवल्क्य 2. 294.] अन्त्यस्यार्यागमे वधः ।

52. If a Chaṇḍāla has recourse to a twice-born woman, he shall suffer death.—(Yājña. 2. 294.)

53. बौधायन] शूद्रं कटाग्निना दहेत् [द्विजस्त्रीगमने]

53. The Shūdra having recourse to a twice-born woman should be burnt by slow fire.—(Baudhāyana in *Vivādaratnākara*, p. 395; in *Vivādachintāmaṇi*, p. 185.)

54. गौतम] आर्यस्त्रीगमने लिङ्गोद्धारः सर्वस्वहरणं च ।
गुप्ता चेद् वधोऽधिकः ।

54. If a Shūdra has recourse to a twice-born woman, his penis shall be cut off, and his entire property confiscated. If the woman is a protected one, he shall suffer death in addition.—(Gautama in *Vivādaratnākara* p. 395; *Vivādachintāmaṇi*, p. 184; and in *Aparārka*, p. 857.)

55. आपस्तम्ब] वध्यः शूद्र आर्यायाम् । दारांश्चास्याकर्षयेत् ॥

55. If a Shūdra has recourse to a twice-born woman, he should be put to death and his wife should be confiscated.—(Āpastamba in *Vivādaratnākara*, p. 395 ; and in *Vivādachintāmaṇi*, p. 185.)

NOTES

'*Confiscated*'—*i.e.*, enslaved.

56. यम] शूद्रं तु घातयेद्राजा शयने तप्त आयसे ।
दहेत् पापकृतं तत्र काष्ठैः पर्णैस्तृणैस्तथा ॥

56. If a Shūdra has recourse to a Brāhmaṇa woman, he should be put to death on a bed of hot-iron, where he may be burnt with fuel and leaves and grass.—(Yama in *Vivādaratnākara*, p. 395 ; and in *Vivādachintāmaṇi*, p. 185.)

57. मनु 8. 374.] शूद्रो गुप्तमगुप्तं वा द्वैजातं वर्णमावसन् ।
अगुप्ते चाङ्गसर्वस्वैर्गुप्ते सर्वेण हीयते ॥

57. A Shūdra having intercourse with a twice-born woman, protected or unprotected, shall be deprived of his limb and his whole property in the case of the unprotected woman, and of everything in the case of the protected woman.—(Manu, 8. 374.)

NOTES

'*Limb*'—That limb with which he has offended.—(*Medhātithi*).—*Penis*.—(*Vivādachintāmaṇi*, p. 179.)

'*Everything*'—not only of one limb, but of the whole body.—The verse lays down amputation of the limb, confiscation of the entire property and the inflicting of death.—(*Medhātithi*).—'Both life and property.'—(*Aparārka* p. 857.)

58. मनु 8. 375.] वैश्यः सर्वस्वदण्ड्यः स्यात् संवत्सरनिरोधतः ।
सहस्रं क्षत्रियो दण्ड्यो मौण्ड्यं मूत्रेण चार्हति ॥

58. The Vaishya having intercourse with a Brāhmaṇa woman shall be deprived of his entire property after a year's imprisonment ; and the Kṣattriya is to be fined 1,000 and be shaved with urine.—(Manu, 8. 375.)

NOTES

'*Urine*'—of the ass.—(*Vivādachintāmaṇi*, p. 180.)

59. मनु 8. 376.] ब्राह्मणीं यद्यगुप्तां तु गच्छेतां वैश्यपार्थिवौ ।
वैश्यं पञ्चशतं कुर्यात् क्षत्रियं तु सहस्रिणम् ॥

59. If the Vaishya and the Kṣattriya have intercourse with an unprotected Brāhmaṇa woman,—the Vaishya should be fined 500 and the Kṣattriya, 1,000.—(Manu, 8. 376.)

NOTES

The lighter penalty for the Vaishya is meant to be for those cases where the Brāhmaṇa woman is as bad as a Shūdra; in other cases, the penalty for the Vaishya shall be the same as that for the Kṣattriya.—(*Vivādachintāmaṇi*, p. 179.)

'*Unprotected*'—who has lost her chastity and has no one to look after her.—The penalty for the Kṣattriya is severer because his duty is to protect people.—(*Medhātithi.*)

60. मनु 8. 377.] उभावपि च तावेव ब्राह्मण्या गुप्तया सह ।
विप्लुतौ शूद्रवद्दण्ड्यौ दग्धव्यौ वा कटाग्निना ॥

60. The Vaishya or the Kṣattriya, offending a protected Brāhmaṇa woman shall be punished like a Shūdra or burnt in a fire of dry grass.—(Manu, 8. 377.)

NOTES

'*Like a Shūdra*'—*i.e.*, 'deprived of everything—both life and property.' (See 54 above).—(*Medhātithi*).

The 'Brāhmaṇa woman' meant here is one possessed of superior qualifications.—(*Vivādachintāmaṇi*, p. 179.)

61. मनु 8. 384.] क्षत्रियायामगुप्तायां वैश्ये पञ्चशतं दमः ।
मूत्रेण मौण्ड्यमिच्छेत्तु क्षत्रियो दण्डमेव वा ॥

61. In the case of the Vaishya approaching an unprotected Kṣattriya woman, the fine shall be 500;—the Kṣattriya shall pay a fine of 500 or suffer tonsure with urine.—(Manu, 8. 384.)

NOTES

'*The Kṣattriya*'—'having recourse to an unprotected Kṣattriya woman.' (*Vivādachintāmaṇi*, p. 179.)

The same punishment is applicable to the Vaishya or the Kṣattriya having intercourse with an unprotected *Vaishya* woman.

In every case the fine for a repeated crime shall be double that of the first offence.—(*Vivādachintāmaṇi*, p. 179.)

62. हारीत] श्रेयसः शयनशायिनं राजा वध्वा श्वभिः खादयेत् ।
काष्ठैश्चैनां दहेत् ॥

62. If a man defiles the bed of a superior person, the king shall tie him up and have him devoured by dogs ; and shall have the woman consigned to the flames.—(Harīta in *Vivādaratnākara*, p. 396 ; and in *Vivādachintāmaṇi*, p. 185.)

63. गौतम] श्वभि : खादयेद्राजा हीनवर्णगमने स्त्रियं प्रकाशम् ।
पुमांसं घातयेद् यथोक्तं वा ।

63. If a woman has intercourse with an inferior man, the king shall have her publicly devoured by dogs, and put the man to death or inflict on him the ordained penalty (*i.e.*, confiscate his entire property and have his penis cut off).—(Gautama in *Vivādaratnākara*, p. 397 ; and in *Vivādachintāmaṇi*, p. 185.)

NOTES

The man also may be devoured by dogs—says *Vivādaratnākara*.

64. वशिष्ठ] शूद्रश्चेद् ब्राह्मणीं गच्छेत् वीरणैर्वेष्टयित्वा शूद्रमग्नौ प्रास्येत् ब्राह्मण्याः शिरसि वापनं कृत्वा सर्पिषाऽभ्युक्ष्य नग्नां खरमारोप्य महापथं व्राजयेत् । वैश्यश्चेद् ब्राह्मणीम् । etc.

64. If a Shūdra has recourse to a Brāhmaṇa woman, he should be wrapped up in straw and thrown into fire ; and the woman's head should be shaved, her body sprinkled with butter and naked, she should be paraded on the public road on an ass.—If a Vaishya has recourse to a Brāhmaṇa woman, his body should be wrapped up in red grass and thrown into fire, and woman's . . . —If a Kṣattriya has . . . Similarly if a Vaishya has recourse to a Kṣattriya woman ; or if

a Shūdra has recourse to a Vaishya or Kṣattriya woman.—(Vashiṣṭha in *Vivādaratnākara*, p. 397; and in *Vivādachintāmaṇi*, p. 185.)

65. यम] वृषलं सेवते या तु ब्राह्मणी मदमोहिता ।
तां श्वभिः खादयेद्राजा ॥
वैश्यं वा क्षत्रियं वापि ब्राह्मणी सेवते तु या ।
शिरसो मुण्डनं तस्याः प्रयाणं गर्दभेन तु ॥

65. If a Brāhmaṇa woman, through infatuation, has intercourse with a Shūdra, the king should have her devoured by dogs. If she has recourse to a Kṣattriya or a Vaishya, her head shall be shaved and she shall be paraded on an ass.—(Yama in *Vivādaratnākara*, p. 398; and in *Vivādachintāmaṇi*, p. 186.)

66. यम] गृहमागत्य या नारी प्रलोभ्य स्पर्शनादिना ।
कामयेत् तत्र सा दण्ड्या नरस्यार्धदमः स्मृतः ॥
छिन्ननासौष्ठकर्णां तां परिभ्राम्याप्सु मज्जयेत् ।
खादयेत् सारमेयैर्वा संस्थाने बहुसंस्थिते ॥

66. When a woman comes to a man's house, and having excited his concupiscence by touching him and such other means, makes advances to him,—it is the woman that should be fined; the fine inflicted on the man being half (of that inflicted upon the woman). The nose, ears and lips of the woman shall be cut off and having been paraded in the streets, she shall be thrown into water; or, she may be devoured by dogs in a crowded place.—(Yama in *Vivādaratnākara*, p. 398; and *Vivādachintāmaṇi*, p. 186; Bṛhaspati, 23, 15-16)

NOTES

The cutting of the nose, etc.—forms an alternative punishment—says *Vivādachintāmaṇi*.

67. विष्णु] स्त्रियमवशक्तभर्तृकां तदतिकामणीं च [हन्यात्] ।

67. The woman who supersedes an impotent husband, should be put to death.—(Viṣṇu in *Vivādaratnākara*, p. 399.)

NOTES

'*Supersedes*'—has recourse to another man.—(*Vivādaratnākara*.)

68. बृहस्पति] अनिच्छन्ती तु या भुक्ता गुप्तां तां वासयेद् गृहे ।
मलिनाङ्गीमधःशय्यां पिण्डमात्रोपजीविनीम् ॥
कारयेन्निष्कृतिं कृच्छ्रं पराकं वा समे गताम् ।
हीनवर्णोपभुक्ता या त्याज्या वध्या च सा भवेत् ॥

68. If a woman has been enjoyed against her wish, she shall be kept guarded in the house, with dirty clothes, lying on the ground, being given food just enough to sustain her ; she may perform the expiatory penances—the '*Kṛchchhra*' or the '*Parāka*'— if the man has been of the same caste as herself. If the man has been ofan inferior caste, she shall be abandoned or put to death.- (Bṛhaspati in *Vivādaratnākara*, p. 400.)

69. कात्यायन] न सतन्त्राः स्त्रियो ग्राह्याः पुमांस्तत्रापराध्यते ।
प्रभुणा शासनीयास्ता राजा तु पुरुषं नयेत् ॥

69. Women who are not independent shall not be arrested by the king, in cases of adultery ; as it is the man who is the criminal. The king shall make over the woman to her lord, who will inflict on her the necessary punishment.—(Kātyāyana in *Vivādaratnākara*, p. 400; and in *Vivādachintāmaṇi*, p. 187.)

NOTES

The translation has followed the interpretation of the commentators. The following however would be a more correct rendering of the text—' Women . . . criminal.- They will be punished by their lords ; it is the man whom the king should take up (and handle for punishment).'

70. कात्यायन] प्रोषितास्वामिका नारी प्रापिता यद्यभिग्रहे ।
तावत् सा बन्धने स्थाप्या यावत् स्यादागतः प्रभुः ॥

70. If a woman whose husband is away is caught misbehaving, she shall be kept confined till her husband comes back.—(Kātyāyana in *Vivādaratnākara*, p. 400 ; and in *Vivādachintāmaṇi*, p. 187.)

71. मत्स्यपुराण] बलात्सन्दूषयेद् यस्तु परभार्यां नरः क्वचित् ।
वधदण्डो भवेत् तस्य नापराधो भवेत् स्त्रियाः ॥

71. If a man forcibly violates a woman, the man shall be put to death ; no blame attaches to the woman.—(Matsyapurāṇa in *Vivādaratnākara*, p. 400.)

72. मत्स्यपुराण] अद्रव्यां मृतपत्नीं तु सङ्गृह्यन्नापराध्नुयात् ।
बलात् परिगृह्णाणस्तु सर्वस्वं दण्डमर्हति ॥

72. If a man has intercourse with a poor woman or a widow, with her consent, he does not commit a crime ; but if he has done it by force, his entire property shall be confiscated.—(Matsyapurāṇa in *Vivādaratnākara*, p. 401.)

NOTES

If a man has forcible connection with his own unwilling slave-girl who is a nurse, he shall be fined 250 *Paṇas* ; if the girl is the slave of another person, the middle amercement.—If the girl is a maiden pledged to him, and he defiles her himself, or gets her defiled by another man, he loses her price, and shall be made to pay a fee to the girl and double the amount of the fee as fine to the king.—(*Arthashāstra*, 3,13.)

DEFILING OF MAIDENS

73. मनु 8. 364.] योऽकामां दूषयेत् कन्यां स सद्यो वधमर्हति ।
सकामां दूषयंस्तुल्यो न वधं प्राप्नुयान्नरः ॥

73. If a man of equal status violates an unwilling maiden, he deserves immediate death ; if he violates a willing one, he shall not suffer death.—(Manu, 8. 364.)

NOTES

'*Of equal status.*'—Belonging to the same caste as the girl.
'*Violates*'—deprives her of her virginity, through sexual intercourse.
This refers to cases of non-Brāhmaṇa criminals,—says *Aparārka*.

74. मत्स्यपुराण] अकामां दूषयेत् कन्यां स सद्यो वधमर्हति ।
सकामां दूषमाणस्तु प्राप्तः प्रथमसाहसम् ॥

74. If a man defiles an unwilling maiden, he should be put to death immediately ; if he defiles a willing maiden, he should suffer the first amercement.—(Matsyapurāṇa in *Vivādaratnākara*, p. 401.)

NOTES

Here also the girl and the man should belong to the same caste,—says *Vivādaratnākara*.

75. आपस्तम्ब] कुमार्यान्तु स्वान्यादाय नाश्यः ।

75. If a man has had sexual intercourse with a maiden, his entire property should be confiscated and he should be demolished.—(Āpastamba in *Vivādaratnākara*, p. 402.)

NOTES

'*Demolished,*'—*i.e.*, banished. This rule refers to cases where the maiden belongs to an inferior caste.—(*Vivādaratnākara*, p. 402.)

76. मनु 8. 366.] उत्तमां सेवमानस्तु जघन्यो वधमर्हति ।
शुल्कं दद्यात् सेवमानः समामिच्छेत् पिता यदि ॥

76. An inferior man having recourse to a superior maiden should be put to death ; he who has recourse to a maiden of equal status shall pay the nuptial fee, if her father so wishes.—(Manu, 8. 366.)

NOTES

This refers to cases where the act has been committed with the consent of the maiden.—(*Medhātithi* and *Vivādaratnākara*, p 402.)—The maiden may have been willing or unwilling.—(*Vivādachintāmaṇi*, p. 176.)

'*Superior*'—in beauty, youth, caste and other points.

'*If the father wishes*'—if the father does not accept the nuptial fee, it may be paid to the king as fine.—(*Medhātithi.*)

As regards the maiden, she may be given to her lover ;—or if she has ceased to love him, to some other man. If the man has ceased to love the girl, he shall be compelled to accept her.—(*Medhātithi.*)

The girl must be married to the violator.—(*Vivādachintāmaṇi*, p. 176.)

77. नारद] कन्यायामसकामायां द्व्यङ्गुलस्यावकर्तनम् ।
उत्तमायां वधस्त्वेवं सर्वस्वहरणं तथा ॥
सकामायां तु कन्यायां सवर्णे नास्त्यतिक्रमः ।
किन्त्वलङ्कृत्य सत्कृत्य स एवैनां समुद्वहेत् ॥

77. If a man has recourse to an unwilling maiden of the same caste as himself, his two fingers should be cut off ;—if it is maiden of a superior caste, he shall be put to death and his entire property confiscated.—There is nothing wrong in a man having recourse to a willing maiden of the same caste as

himself; but he has to marry her after having adorned her and honoured her.—(Nārada in *Vivādaratnākara*, p. 402; and in *Vivādachintāmaṇi*, p. 176.)

NOTES

This refers to cases where the violating has been done by means of two fingers. What the penalty means is that '*two anguls*' (inches) of the penis shall be cut off--according to Harihara.—(*Vivādaratnākara*, p. 402.)

78. शङ्खलिखित] कन्यायामसकामायां द्व्यङ्गुलच्छेदो दण्डः । उत्तमायां वधो जघन्यस्य । समायां शुल्कमाभरणं च द्विगुणं स्त्रीधनं दत्वा प्रतिपाद्येत ॥

78. For violating an unwilling maiden, the punishment is the cutting off of two fingers.—If an inferior man has recourse to a superior maiden he should be put to death.—If the maiden is of the same status as the man, he should pay her the nuptial fee, present her with ornaments and with a double dowry, and then marry her.—(Shaṅkha-Likhita in *Vivādaratnākara*, p 402; and in *Vivādachintāmaṇi*, p. 176.)

NOTES

'*Of the same status*'--and *willing* (*Vivādaratnākara*.)

(*a*) For defiling a maiden of one's own caste, before puberty, - cutting off of the hand or a fine of 400.—If the girl dies, the man should suffer death.—(*Arthashāstra*, 4. 12.)

(*b*) If a man defiles a maiden of his own caste, after puberty, his middle and index fingers shall be cut off, or he shall be fined 200; and he shall pay damages to the father.—If he has done it with her consent, he shall be fined 54 and the girl 27 *Paṇas*.--If the maiden was one whose nuptial fee had already been paid by another man, the defiler's hand shall be cut off, or he shall be fined 400, and be made to pay the nuptial fee. There would be no offence if the girl had waited in vain for the man to whom she might have been betrothed.—If the man has had connection with her by representing himself as the one to whom the girl had been betrothed, he shall be fined 200.—(*Arthashāstra*, 4. 12.)

(*c*) If a man has defiled a betrothed, but virgin, girl, he shall pay a fine of 54 *Paṇas*, and also the nuptial fee and other expenses incurred by the man to whom the girl had been betrothed.—(*Arthashāstra*, 4. 12.)

79. मनु 8. 367.] अभिषह्य तु यः कन्यां कुर्याद् दर्पेण मानवः ।
तस्याशु कर्त्ये अङ्गुल्यौ दण्डं चार्हति षट्शतम् ॥

79. If a man wantonly defiles a maiden through sheer audacity, his fingers should be instantly clipped off,—or he should be made to pay a fine of 600.—(Manu, 8. 367.)

NOTES

Even though the maiden may be willing, if her parents and other relatives are close by, and their presence is not heeded by the man who, through sheer audacity,—and relying upon the maiden's love for himself—defiles her, then either his fingers shall be cut off or he shall be fined 600.—According to some people what the text means is that if a man defiles a maiden of a low caste, he shall not suffer death—only his fingers shall be cut off.—(*Medhātithi.*)

This refers to a case where a man defiles an unwilling maiden of the same caste as himself,—two of his fingers with which he had defiled the girl shall be cut off ; or he shall be fined 600.—(*Vivādachintāmaṇi*, p. 176.)

80. मनु 8. 368.] सकामां दूषयंस्तुल्यो नाङ्गुलिच्छेदमाप्नुयात् ।
द्विशतं तु दमं दाप्यः प्रसङ्गविनिवृत्तये ॥

80. A man of equal status defiling a willing maiden shall not suffer amputation of fingers,—he shall be made to pay a fine of 200.—(Manu, 8. 368.)

NOTES

The preceding text refers to a case where the act has been audacious ; the present text refers to a case where it has been done secretly, by stealth.—Or the meaning of the text may be as follows :—' If a maiden happens to be in love with a certain man, and having had intercourse with him has lost her virginity,—then, since the girl was willing, the man, for the crime of defiling her, shall pay a fine of 200.'—Or again, the ' defiling ' meant here may be taken to stand for the *touching of the hand* or some other part of the body, with the motive that if people saw him touching her, they would think that she loved him and hence no one else would seek her hand and she would, of necessity, be married to him.—(*Medhātithi.*)

The rule refers to girls of inferior status—says *Vivādaratnākara* (p. 403).

81. मनु 8. 369.] कन्यैव कन्यां या कुर्यात् तस्याः स्याद् द्विशतो दमः ।
शुल्कं च द्विगुणं दद्याच्छिफाश्चैवाप्नुयाद्दश ॥

81. If a maiden pollutes another maiden, her fine shall be 200 ; she shall also pay the double of her nuptial fee and shall receive ten lashes.—(Manu, 8. 369 ; attributed to Nārada in *Vivādachintāmaṇi*, p. 177.)

NOTES

'*Nuptial fee*'—The exact amount will depend upon the girl's beauty or fortune and other qualities.—'*Lashes*'—strokes of rope or creeper.—(*Medhātithi.*)

'*Pollutes*'—by inserting fingers in her private parts.—(*Vivādachintāmaṇi*, p. 171.)

'*Double*'—of 200, *i.e.*, 400 is to be paid towards the nuptial fee of the girl.—(*Vivādaratnākara*, p. 403.)

82. मनु 8. 370.] या तु कन्यां प्रकुर्यात् स्त्री सा सद्यो मौण्ड्यमर्हति ।
अङ्गुल्योरेव वाच्छेदं खरेणोद्वहनं तथा ॥

82. If a woman pollutes a maiden, she shall be immediately shaven off, or shall suffer the amputation of her two fingers; and shall also be paraded on an ass.—(Manu, 8. 370.)

NOTES

'*Paraded on an ass.*'—This in the case of the shaving of her head.—Some people hold that there are three distinct penalties laid down here in view of the three castes; but there is no authority for such a view.—(*Medhātithi.*)

The '*amputation of the fingers*' is meant for cases of repeated offence.—(*Vivādachintāmaṇi*, p. 177.)

(*a*) If a woman allows herself to be defiled by a woman of the same caste as herself she shall be fined 12 *Paṇas*; the other woman shall be fined double that amount.—If this latter woman has done it without the consent of the girl, she shall be fined 100 and also pay the nuptial fee.—If a girl defiles herself, she shall be enslaved by the king.—If any of these crimes is committed outside the village, the fine shall be double.—Double of that again if a girl is falsely accused of defilement.—(*Arthashāstra*, 4.12.)

(*b*) If a man defiles a prostitute's daughter he shall be fined 54 *Paṇas*, and shall also pay a fee four times this, to the girl's mother.—(*Arthashāstra*, 4. 12.)

(*c*) If a man defiles a slave's daughter, who is not a slave, he shall be fined 24 *Paṇas* and he shall also pay a fee and also for her ornaments.—(*Arthashāstra*, 4. 12.)

83. मनु 8. 365.] कन्यां भजन्तीमुत्कृष्टं न किञ्चिदपि दापयेत् ।
जघन्यं सेवमानां तु संयतां वासयेद्गृहे ॥

83. If a maiden approaches a superior man, she shall not be made to pay any fine; if, however, she courts an inferior man, she shall be kept confined in the house.—(Manu, 8. 365.)

NOTES

'*Approaches*'—Has sexual intercourse with.—(*Medhātithi.*)

'*Superior man*'—One whose caste, wealth, character or learning are superior to that of her father's family.—(*Medhātithi.*)

'*Courts*'—Tries to have intercourse with.—(*Medhātithi.*)

84. याज्ञवल्क्य 2. 287.] अलङ्कृतां हरन् कन्यामुत्तमं त्वन्यथाऽधमम् ।
दण्डं दद्यात् सवर्णां तु प्रातिलोम्ये वधः स्मृतः ॥

84. If a man carries away an adorned maiden of the same caste as himself, he should suffer the highest amercement; if he carries away an unadorned woman of the same caste, he should suffer the lowest amercement.—If the maiden is of superior caste, he shall suffer death.—(Yājña. 2. 287.)

NOTES

'*Adorned*,'—*i.e.*, dressed and ornamented and made ready for being given away to another man.—(*Vivādaratnākara*, p. 404.)

(*a*) If a man forcibly takes away a maiden, he shall be fined 200;—1,000, if the girl was wearing gold ornaments.—If the girl has been taken away by several persons combined, each of these shall be fined as above.—(*Arthashāstra*, 4. 12.)

(*b*) If a man defiles a slave-girl who is fit for being emancipated, he shall be fined 12 *Paṇas* and shall also give her clothes and ornaments.—(*Arthashāstra*, 4. 12.)

(*c*) If the wife of a person gone abroad has misbehaved either with his relatives or with his servants,—she shall ask for her husband's pardon on his return.—If he pardons her, then both the parties shall be let off; but if the husband does not pardon her, then the ears and nose of the woman shall be cut off, and her paramour shall suffer death.—(*Arthashāstra*, 4.12.)

(*d*) If a man hides his wife's paramour by putting him up as a thief, the former shall be fined 500; if he lets him off after receiving gold from him, he shall be fined 4,000.—(*Arthashāstra*, 4,12.)

85. याज्ञवल्क्य 2. 288.] सकामास्वनुलोमासु न दोषस्त्वन्यथा दमः ॥

85. In the case of maidens of inferior caste, there is no offence; in other cases, punishment should be inflicted.—(Yājña. 2. 288.)

86. याज्ञवल्क्य 2. 288.] दूषणे तु करच्छेद उत्तमायां वधस्तथा ॥

86. For defiling a maiden of inferior caste, the man's hand shall be cut off; if the maiden is of superior caste, he shall suffer death.—(Yājña. 2. 288.)

NOTES

'*Hand*'—*i.e.*, fingers—(*Aparārka*.)

'*Defiles*'—by penetrating her private parts with his fingers—(*Aparārka*.)

The meaning is that if a man forcibly 'defiles' an *unwilling* maiden of inferior caste by making nail marks, etc., on her body, then his *hand* shall be cut off; but if he 'defiles'—by thrusting his fingers into her private parts—a *willing* maiden (and hence *not by force* adds *Bālambhaṭṭī*), then his fingers shall be cut off and he shall be fined 600, as laid down by Manu, 8. 367.—(*Mitākṣarā*.)

(*a*) If a man approaches a *Chaṇḍāla* woman, he shall be branded with the mark of a headless human body and banished.—(*Arthashāstra*, 4. 13.)

(*b*) If a *Chaṇḍāla* approaches a nobly-born woman, he shall suffer death; and the woman shall have her ears and nose cut off.—(*Arthashāstra*, 4. 13.)

(*c*) If a man has connection with a female ascetic, he shall be fined 24 *Paṇas*.—If the woman had been willing, she also shall be fined 24 *Paṇas*.—(*Arthashāstra*, 4. 13.)

(*d*) If a man has forcible connection with a prostitute, he shall be fined 12 *Paṇas*.—(*Arthashāstra*, 4. 13.)

(*e*) If several men have connection with a single prostitute, each of them shall be fined 24 *Paṇas*.—(*Arthashāstra*, 4. 13.)

INTERCOURSE WITH UNCHASTE WOMEN

87. यम] परदारे सवर्णासु दण्ड्याः स्युः पञ्च कृष्णलान् ।
असवर्णास्वानुलोम्ये दण्डो द्वादशकः स्मृतः ॥

87. For intercourse with a notoriously unchaste woman of the same caste as himself a man should be fined five *Kṛṣṇalas*; if the woman belongs to a lower caste, the fine shall be 12 *Paṇas*.—(Yama in *Vivādaratnākara*, p. 405; and in *Aparārka*, p. 860.)

88. व्यास] बहुभिर्भुक्तपूर्वां या गच्छेद् यस्तां नराधमः ।
तस्य वेश्यावदिच्छन्ति दण्डनं न तु दारवत् ॥

88. If a man has intercourse with a woman who has been previously enjoyed by many men, he is to be punished like one who visits prostitutes, not the wives (of others).—(Vyāsa in *Vivādaratnākara*, p. 405; and in *Vivādachintāmaṇi*, p. 189.)

89. नारद] स्वैरिण्यब्राह्मणी वेश्या दासी निष्कासिनी च या ।
गम्याः स्युरानुलोम्येन स्त्रियो न प्रतिलोमतः ॥
आस्वेव तु भुजिष्यासु दोषः स्यात् परदारवत् ॥

89. A loose non-Brāhmaṇa woman, a prostitute, a maid-servant, a loose woman who has left her family (or a slave-girl not in the keeping of her master)—a man may have intercourse with these if they belong to castes lower than his own. If, however, any of these happen to be the kept mistress of another man, the offence shall be treated like 'adultery.'—(Nārada in *Vivādaratnākara*, p. 405 ; *Vīramitrodaya*, p. 510 ; *Parāsharamādhava*, p. 320 ; and *Mitākṣarā*, 2. 290.)

NOTES

'*Niṣkāsinī*' has been explained as 'a loose woman who has left her family' by *Vivādaratnākara*; but as 'a slave-girl not kept by her master' by *Parāsharamādhava*, *Mitākṣarā* and *Vīramitrodaya*.

90. याज्ञवल्क्य 2. 290.] अवरुद्धासु दासीषु भुजिष्यासु तथैव च ।
गम्यास्वपि पुमान् दाप्यः पञ्चाशत्पणिकं दमम् ॥

90. As regards protected slave-girls or kept mistresses (as also prostitutes and unchaste women in general),—even though intercourse with them is punishable, for such intercourse a man should be fined 50 *Paṇas*.—(Yājña. 2. 290.)

NOTES

Slave-girls are said to be 'protected' when their master keeps them confined in his house, in order to guard against their being enjoyed by other men and thereby interfering with the performance of their duties towards himself. A 'kept mistress' is one who is kept by a man for himself and is prevented from intercourse with other men.—(*Parāsharamādhava*, p. 319 ; and *Mitākṣarā*.)

91. व्यास] परावरुद्धागमने पञ्चाशत्पणिको दमः ।

91. For intercourse with the kept mistress of another man, the fine is 50 *Paṇas*.—(Vyāsa in *Vivādaratnākara*, p. 406 ; *Vīramitrodaya*, p. 510 ; and *Vivādachintāmaṇi*, p. 187.)

92. व्यास] प्रसह्य वेश्यागमने दण्डो दशपणः स्मृतः ॥

92. For forcible connection with a prostitute, the fine is 10 *Paṇas.*—(Vyāsa in *Vivādaratnākara*, p. 406; and in *Vivādachintāmaṇi* and *Vīramitrodaya*, p. 510.)

NOTES

'*Forcible*'—*i.e.*, without paying the fee.

93. याज्ञवल्क्य 2. 291.] प्रसह्य दास्यां गमने दण्डो दशपणः स्मृतः ।
बहूनां यद्यकामासौ चतुर्विंशतिकः पृथक् ॥

93. (A) For forcible connection with a slave-girl, the fine is 10 *Paṇas.*—(B) If several men have intercourse with an unwilling woman, each of them shall be fined 24 *Paṇas.*—(Yājña. 2. 291.)

NOTES

There would be no offence if the woman has been paid her dues and expressed her unwillingness only after payment.—(*Mitākṣarā*).

94. याज्ञवल्क्य 2. 293.] अयोनौ गच्छतो रागात् पुरुषं वापि मेहतः ।
चत्वारिंशत्पणो दण्डस्तथा प्रव्रजितागमे ॥

94. A man having unnatural intercourse (with a woman) or with a man,—also one having intercourse with a female mendicant,—shall be fined 40 *Paṇas.*—(Yājña. 2. 293.)

NOTES

If a man has unnatural intercourse with a woman,—or with a man,—he shall be fined 250.—(*Arthashāstra*, 4. 13.)

'*Mendicant*'—belonging to a heretical sect.

95. नारद] वेश्यागामी द्विजो दण्ड्यो वेश्याशुल्कसमं दमम् ॥

95. For connection with a prostitute, the twice-born should be fined the same amount as the fee of the prostitute.—(Nārada in *Vivādaratnākara*, p. 408; and in *Vivādachintāmaṇi*, p. 188.)

NOTES

'*Fee of the prostitute*'—*i.e.*, 500 *Paṇas*—says *Vivādachintāmaṇi*.

(*a*) If a man has rescued a woman who has been kidnapped by robbers, or was being carried away by a flood, or was abandoned during a famine, or has been given up as dead,—he can enjoy her with her consent. If however she belongs to a superior caste, or is unwilling, or has children, he shall restore her to her husband after receiving adequate compensation from him.—(*Artha-shāstra*, 4. 12.)

ANIMALS

96. याज्ञवल्क्य 2. 289.] पशुं गच्छन् शतं दण्ड्यो हीनस्त्रीं गां च मध्यमम् ॥

96. For intercourse with a cow and a low woman, a man should be fined 500 ; and 100 for intercourse with other animals.—(Yājña. 2. 289.)

97. विष्णु] पशुगमने कार्षापणशतं दण्ड्यः ॥

97. For connection with animals, a man should be fined 100 *Kārṣāpaṇas*.—(Viṣṇu in *Vivādaratnākara*, p. 407.)

98. मत्स्यपुराण] तिर्यग्योनौ तु गोवर्ज्जं मैथुनं यो निषेवते ।
स पणं प्राप्नुयाद् दण्डं तस्याश्च यवसोदकम् ॥

98. If a man has connection with an animal other than the cow, he shall pay a fine of one *Paṇa* and shall be liable for the feed of that animal.—(Matsyapurāṇa in *Vivādaratnākara*, p. 407.)

99. नारद] पशुयोनावतिक्रामन् विनेयः सदशं शतम् ।
मध्यमं साहसं गोषु ।

99. If a man has connection with an animal, he should be fined 100 *Paṇas* ;—if with a cow, he should suffer the middle amercement.—(Nārada in *Vivādaratnākara*, p. 407; and in *Vivādachintāmaṇi*, p. 188.)

NOTES

For intercourse with a cow, the Shūdra should suffer death, as declared by Viṣṇu (see above) ; the fine here laid down is for the Kṣattriya and the Vaishya. For the Brāhmaṇa we have the following rule.—(*Vivādaratnākara.*)

100. नारद] सुवर्णन्तु भवेद् दण्ड्यो गां व्रजन् मनुजोत्तमः ॥

100. For intercourse with a cow, the Brāhmaṇa should be fined one ' *Suvarṇa.* '—(Nārada in *Vivādaratnākara*, p. 408; and in *Vivādachintāmaṇi*, p. 188.)

NOTES

For sexual connection with an animal, the fine shall be 12 *Paṇas.*—(*Arthashāstra*, 4. 13.)

[*N.B.*—In connection with Adultery, the law books deal with the Duties of man and wife towards each other,—the transgression of which is punishable like a crime.—Says the *Arthashāstra*, 3.8.] :—

'The woman attains majority at 12 and the man at 16 : after that if they fail in their duty to each other, the woman shall be fined 12 *Paṇas* and the man 24 *Paṇas.* '

MAN'S DUTY TOWARDS HIS WIFE

101. बृहस्पति 24. 4.] आयव्ययेऽथ संस्कारे गृहोपस्कररक्षणे ।
शौचाग्निकार्ये संयोज्याः ॥

101. Women should be employed in looking after income and expenditure, in the preparation of food, in the preservation of household utensils, in cleanliness and in the tending of fire.—(Bṛhaspati, 24. 4 ; in *Vīramitrodaya*, p. 519.)

NOTES

In the event of the wife being put in charge of the maintenance of the family, the husband shall hand over to her funds enough to provide for the food and clothing for all members of the family, and also something in addition.—(*Arthashāstra*, 3. 3.)

102. मनु 3. 59.] तस्मादेताः सदाभ्यर्च्याः भूषणाच्छादनाशनैः ।
भूतिकामैर्नरैर्नित्यं संस्कारेषूत्सवेषु च ।

102. Women shall be ever honoured with ornaments, food and clothes,—by men who desire their own welfare ; as also at rites and rejoicings.—(Manu, 3. 59.)

103. मनु 9. 11.] अर्थस्य संग्रहे चैनां व्यये च विनियोजयेत् ।
शौचे धर्मेऽन्नपक्त्यां च पारिणाह्यस्य चेक्षणे ॥

103. The householder shall employ his wife in the amassing of wealth and also its expenditure, in cleanliness, in religious ceremonies, in the cooking of food and in the preservation of household utensils.—(Manu, 9. 11.)

104. याज्ञवल्क्य 1. 82.] भर्तृभ्रातृपितृज्ञातिश्वश्रूश्वशुरदेवरैः ।
बन्धुभिश्च स्त्रियः पूज्याः भूषणाच्छादनाशनैः ॥

104. Women are to be honoured with ornaments, clothing and food, by the husband, brother, father, paternal relations, father-in-law, mother-in-law, brother-in-law and other relations.—(Yājña. 1. 82.)

105. मनु 9. 74.] विधाय वृत्तिं भार्यायाः प्रवसेत् कार्यवान्नरः ।

105. A man having business may go abroad, after having provided for the maintenance of his wife.—(Manu, 9. 74.)

106. मनु 9. 85-86.] यदि स्वाश्चापराश्चैव विन्देरन् योषितो द्विजाः ।
तासां वर्णक्रमेण स्याज्ज्यैष्ठ्यं पूजा च वेश्म च ॥
भर्तुः शरीरशुश्रूषां धर्मकार्यं च नैत्यकम् ।
स्वा स्वैव कुर्यात् सर्वेषाम् ॥

106. When twice-born men wed women of their own as well as other castes, their seniority, honour and habitation shall be according to the order of their castes.—Of all wives, the wife of the man's own caste shall attend to the husband's personal service, as also to his daily sacred rites.—(Manu, 9. 85-86.)

107. याज्ञवल्क्य (?)] सत्यामन्यां सवर्णायां धर्मकर्म न कारयेत् ।
सवर्णासु विधौ धर्म्ये ज्येष्ठया न विनेतराः ॥

107. So long as he has a wife of the same caste as himself, the man shall not have his religious rites performed by any other wife; among the several wives of his own caste also, he shall get them done by the seniormost.—(Yājña. in *Vivādaratnākara*, p. 419.)

108. विष्णु] सवर्णासु बह्वीषु भार्यासु विद्यमानासु ज्येष्ठयैव सह धर्मकार्यं कुर्यात् । मिश्रासु कनिष्ठयापि सवर्णया । अभावे त्वनन्तरयैव । न त्वेव द्विजः शूद्रया ॥

108. Where a man has several wives of the same caste as himself, he shall perform his religious rites with the seniormost among them; if he has wives of various castes, he shall do them with the help of the wife of his own caste, even though she be junior. If he has no wife of his own caste, he shall do the rites with the help of the wife of the next lower caste; the twice-born shall never do it with the Shūdra wife.—(Viṣṇu in *Vivādaratnākara*, p. 419.)

109. कात्यायन] अग्निशिष्टादिशुश्रूषां बहुभार्यः सवर्णया ।
कारयेत् तद्बहुत्वं चेत् ज्येष्ठया गर्हिता न चेत् ॥
या वा स्याद्वीरसूरेषामाज्ञासम्पादिनी प्रिया ।
दक्षा प्रियंवदा शुद्धा तामत्र विनियोजयेत् ॥
दिनक्रमेण वा कर्म यथाज्यैष्ठ्यं स्वशक्तितः ।
विभज्य सह वा कुर्युर्यथाज्ञानमशाठ्यवत् ॥

109. A man who has several wives should have the tending of the fire and such other services performed by the wife belonging to the same caste as himself; if there are several such wives, then by the seniormost among them, if she is not in any way despised,—or by that one who may have given birth to a heroic son and who is most obedient, and loved, clever, pure and of sweet speech; or he may have the said services performed by them by turns; or they may all divide the duties amicably amongst themselves.—(Kātyāyana in *Vivādaratnākara*, p. 420.)

110. मनु 3. 60; 9. 101.] सन्तुष्टो भार्यया भर्ता भर्त्रा भार्या तथैव च ।
यस्मिन्नेव कुले नित्यं कल्याणं तत्र वै ध्रुवम् ॥
अन्योन्यस्याव्यभिचारो भवेदामरणान्तिकः ॥

110. Where the husband is satisfied with the wife, and the wife with the husband,—in that family alone is prosperity lasting. Till death they should remain faithful to one another.—(Manu, 3. 60; 9. 101.)

111. याज्ञवल्क्य (?)] यत्रानुकूलं दम्पत्योस्त्रिवर्गस्तत्र वर्धते ॥

111. Where there is mutual good-will between husband and wife, there the three ends of man prosper.—(Yājña. in *Vivādaratnākara*, p. 422.)

112. मनु 9. 77.] संवत्सरमुदीक्षेत द्विषाणां योषितं पतिः ।
ऊर्ध्वं संवत्सरात् त्वेनां दायं हृत्वा न संवसेत् ॥

112. If the wife is inimical to her husband, the husband shall bear with her for one year ; after the year he shall wrest her property and cease to live with her.—(Manu, 9. 77.)

NOTES

Though the text speaks of ' not living with her, ' yet all that is meant is that he shall *chide* her. Similarly the ' wresting ' of the property also is for the purpose of bringing her to her senses, and it does not mean absolute taking away of all her belongings.—(*Medhātithi.*)

113. नारद] अनुकूलामवाग्दुष्टां दक्षां साध्वीं प्रजावतीम् ।
त्यजन् भार्यामवस्थाप्यो राज्ञा दण्डेन भूयसा ॥

113. If a man abandons a wife who is devoted to him, not harsh in her speech, clever, good and with children,—he should be punished by the king with a heavy fine.—(Nārada in *Vivādaratnākara*, p. 423)

114. विष्णु] निर्दोषां परित्यजन् पत्नीं च [चौरवद्दण्ड्यः] ।

114. If a man abandons a faultless wife, he shall suffer the penalty prescribed for the thief.—(Viṣṇu in *Vivādaratnākara*, p. 423.)

115. नारद] अनर्थशीलां सततं तथैवाप्रियवादिनीम् ।
पूर्वाशिनी च या भर्तुस्तां स्त्रीं निर्वासयेद् गृहात् ॥
बन्ध्यां स्त्रीजननीं नित्यप्रतिकूलां च सर्वदा ।
कामतो नाभिनन्देत ॥

115. If a wife is addicted to evil ways or of harsh speech, or is in the habit of eating before her husband,—her husband shall turn her out of the house. If a wife is barren, or gives birth to girls only, or is always averse to her husband,—the husband may not treat her lovingly.—(Nārada in *Vivādaratnākara*, p. 424.)

116. बौधायन] अशुश्रूषाकरीं वन्ध्यां बन्धकीं पतिहिंसकीम् ।
त्यजन्ति पुरुषाः प्राज्ञाः क्षिप्रमप्रियवादिनीम् ॥
अप्रजां दशमे वर्षे स्त्रीप्रजां द्वादशे त्यजेत् ।
प्रेतप्रजां पञ्चदशे सद्यस्त्वप्रियवादिनीम् ॥

116. If a wife does not attend to his needs, or is barren, or unchaste, or inimical to her husband, or is harsh of speech,—wise men always abandon such a wife.—The barren wife shall be abandoned after ten years; she who gives birth to girls only, after twelve years; she whose children are always still-born, after fifteen years; and she who is harsh of speech, immediately.—(Baudhāyana in *Vivādaratnākara*, p. 425.)

NOTES

If the wife has ceased to bear children after the birth of one, or has given birth to no son, he shall wait on her behalf for eight years; if she gives birth to still-born children, ten years; if she gives birth to girls only, twelve years; after that, desiring a son, he shall take another wife; but he shall hand over to her her *strīdhana* as also compensation for supersession; and a fine of 24 *Paṇas* to the king.—(*Arthashāstra*, 3. 2.)

117. हारीत] गर्भघ्नीमधोवर्णगां शिष्यसुतगामिनीं च
पापव्यसनासक्तां धनधान्यक्षयकरीं च वर्जयेत् ॥

117. If a wife procures her abortion,—or has intercourse with a man of lower caste, or with a pupil, or with her son,—or is addicted to wicked vices,—or is wasteful of money and grains,—she shall be abandoned.—(Hārīta in *Vivādaratnākara*, p. 426.)

118. मनु (?)] स्वच्छन्दगा च या नारी तस्यास्त्यागो विधीयते ।
न वधं न च वैरूप्यं बन्धं स्त्रीणां विवर्जयेत् ॥

118. If a wife is loose in her ways, she shall be abandoned; for women, there is no corporeal punishment, no imprisonment, nor disfiguring; they should only be abandoned.—(Manu in *Vivādaratnākara*, p. 426.)

119. याज्ञवल्क्य 1. 70.] हृताधिकारां मलिनां पिण्डमात्रोपजीविनीम् ।
परिभूतामधःशय्यां वासयेद् व्यभिचारिणीम् ॥

119. If a wife has become unchaste, the husband shall confine her to the house, taking away all her privileges, dirty, receiving food only just enough for sustaining her, despised and sleeping on the ground.—(Yājña. in *Vivādaratnākara*, p. 426.)

120. नारद] व्यभिचारे स्त्रिया मौण्ड्यमधःशयनमेव च ।
कदन्नं च कुवासश्च कर्म चावस्करोज्झनम् ॥

120. If a wife has been unchaste, her head shall be shaven off, she shall be made to sleep on the ground, shall be given coarse food and an unsuitable room; and she shall do the work of cleaning dirt and sweeping.—(Nārada in *Vivādaratnākara*, p. 426.)

WIFE'S DUTY TO HUSBAND

121. मनु 5. 147—149.] बालया वा युवत्या वा वृद्धया वापि योषिता ।
न स्वातन्त्र्येण कर्तव्यं किञ्चित् कार्यं गृहेष्वपि ।
पित्रा भर्त्रा सुतैर्वापि नेच्छेद्विरहमात्मनः ॥

121. In girlhood or youth or old age, a woman shall never do anything independently by herself.—She shall never desire to be separated from her father, husband, or son.—(Manu, 5. 147—149.)

122. बृहस्पति] पित्रा भर्त्रा सुतैर्न स्त्री वियुक्ताऽन्यगृहे वसेत् ।

122. A woman shall never live in another man's house, when not accompanied by her father, husband or sons.—(Bṛhaspati in *Vivādaratnākara*, p. 427.)

123. याज्ञवल्क्य 1. 86.] पितृमातृसुतभ्रातृश्वश्रूश्वशुरमातुलैः ।
हीना न स्याद्विना भर्त्रा ॥

123. The mistress of the house shall never live apart from her father, mother, son, brother, father-in-law, mother-in-law, maternal uncle or husband.—(Yājña. in *Vivādaratnākara*, p. 427.)

124. मनु 5. 150.] सदा प्रहृष्टया भाव्यं गृहकार्येषु दक्षया ।
सुसंस्कृतोपस्करया व्यये चामुक्तहस्तया ॥

124. A woman shall remain always happy, expert in household work; she shall keep her domestic articles clean and shall not be wasteful in expenditure.—(Manu in *Vivādaratnākara*, p. 427.)

125. याज्ञवल्क्य 1. 83.] संयतोपस्करा दक्षा हृष्टा व्ययपराङ्मुखी ।
कुर्याच्छ्वशुरयोः पादवन्दनं भर्तृतत्परा ॥

125. Keeping all household articles in order, expert in household work, happy, averse to undue expenditure, devoted to her husband,—she shall salute the feet of her parents-in-law.—(Yājña. in *Vivādaratnākara*, p. 427.)

126. बृहस्पति] पूर्वोत्थानं गुरुष्वर्चा भोजनव्यञ्जनक्रिया ।
जघन्याशनशायित्वं कर्म स्त्रीणामुदाहृतम् ॥

126. She shall rise before the rest of the family, worship the elders, cook food and eat and sleep last,—such is the duty of women.—(Bṛhaspati in *Vivādaratnākara*, p. 428.)

127. देवल] अस्वातन्त्र्यम्, पतिशुश्रूषा, सहधर्मचर्या, तत्पूज्यपूजनम्, परवेश्मागमनम्, तद्द्वेष्यमाणद्वेषणम्, अदुष्टा भावना, नित्यानुकूल्यम्, तत्कार्यपरत्वम्—इति स्त्रीधर्मः ॥

127. Subserviency, service of husband, co-operating with him in religious acts, honouring those whom he honours, not visiting other's house, hatred for those he hates, avoidance of evil thoughts, kindly disposition towards him, devotion to his work,—such is the duty of women.—(Devala in *Vivādaratnākara*, p. 428.)

128. विष्णु] अथ स्त्रीधर्माः । भर्तुः समानचारित्वम्, श्वशुरगुरुदेवतातिथीनां पूजनम्, सुसंस्कृतोपस्करता, अमुक्तहस्तता, सुगुप्तभाण्डता, मूलक्रियास्वनभिरतिः, मङ्गलाचारतत्परता, भर्तरि प्रीते प्रतिकर्मक्रिया, परगृहेष्वनभिगमनम्, द्वारदेशगवाक्षेष्वनवस्थानम्, सर्वकर्मास्वतन्त्रता, बाल्ययौवनवार्धकेषु पितृभर्तृपुत्रपराधीनता ॥

128. Duties of woman:—To live in harmony with her husband;—to show reverence to her parents-in-law, to elders, to divinities, and to guests;—to keep household articles in

good array ;—to maintain saving habits ;—to be careful with domestic utensils ;—not to practise witchcraft ;—to observe auspicious customs ;—to decorate herself with ornaments only when her husband is happy ;—not to resort to the houses of strangers ;—not to stand near the door-way or by the windows ;—not to act by herself in any matter ;—to remain subject, in her infancy to her father, in her youth to her husband, and in her old age to her sons —(Viṣṇu, 25. 1—13.)

129. विष्णु] नारीषु नित्यं शुचिभूषितासु पतिव्रतासु प्रियवादिनीषु ।
अमुक्तहस्तासु प्रजान्वितासु सुगुप्तभाण्डासु बलिप्रियासु ॥
सुश्लिष्टवेश्मासु जितेन्द्रियासु कलिव्यपेतासु विलोलुपासु ।
धर्माव्यपेतासु दयान्वितासु स्थिता सदाऽहं जगतां विधात्रि ॥

129. 'Pure and well-dressed, devoted to husband, of sweet speech, not wasteful in expenditure, having children, keeping utensils carefully, fond of making offerings, keeping house clean and well-arranged, having senses under control, avoiding quarrels, not greedy, not deviating from righteousness, sympathetic,—I always abide with such women, O Ordainer of the worlds!'—(says Lakṣmī).—(Viṣṇu in *Vivādaratnākara*, p. 428.)

130. शङ्खलिखित] श्वः श्वः पचनभाण्डानामुपलेपनम्, सुसम्मृष्टगृहद्वारोपलेपनम्, कृतशौचानुकूल्यदध्यक्षतदूर्वाप्रबालपुष्पकृतबलिकर्म, श्वश्रूश्वशुराद्यभिवादनानन्तरं गृहावश्यकानि कुर्यात् । न देवभूतपतिभ्योऽग्रेऽश्नीयात्, न भर्तुः—अन्यत्र प्रतिकारौषधात् ॥

130. Every morning, cleaning the utensils,—smearing the floors and doorsteps with cowdung,—after bath, offering of curds, rice, grass-blades and flowers,—saluting parents-in-law and other elders,—she shall perform her household duties ;—she shall not take her food before having made offerings to divinities and lords of elementals and fed her husband, except as regards medicines.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 429.)

131. मनु 9. 13.] पानं दुर्जनसंसर्गः पत्या च विरहोऽटनम् ।
स्वप्नोऽन्यगृहवासश्च नारीसन्दूषणानि षट् ॥

131. Drinking, associating with wicked people, separation from her husband, rambling, sleeping and residing in other's house,—these are the six corrupters of women.—(Manu, 9. 13.)

NOTES

'*Rambling*'—in the market-place for purchasing vegetables, etc., and also in temples and other places.—(*Medhātithi.*)

NOTES FROM ARTHASHĀSTRA

(*a*) If the wife, on being forbidden, takes herself to a drinking bout she shall be fined three *Paṇas* ; if during the day she goes to witness sports or dramatic performances by women, 6 *Paṇas* ; if to sports and performances by men, 12 *Paṇas* ; double, if at night. If she goes out of the house while her husband is drunk or asleep, or if she does not open the door for her husband, 12 *Paṇas*.—(*Arthashāstra*, 3. 3.)

(*b*) If a woman holds conversation with a man in suspicious places, she shall be punished with lashes instead of fines. If a man and woman—even when forbidden—exchange small presents, the woman shall be fined 12 *Paṇas* ; if the presents are heavy 24 *Paṇas* ; if they are valuable, 50 *Paṇas* ; for the man in each case the fine shall be double.—(*Arthashāstra*, 3. 3.)

(*c*) If a woman runs away from her husband's house,—without being ill-treated,—she should be fined 6 *Paṇas* ;—if she runs away, even after being forbidden, 12 *Paṇas* ;—if she has gone away into one of the neighbour's houses, 6 *Paṇas*.—(*Arthashāstra*, 3. 4.)

(*d*) If a woman offers accommodation to a neighbour, or alms to a beggar, or receives commodities from traders, she is to be fined 12 *Paṇas* ;—if she does it even after being forbidden, 250 *Paṇas*.—(*Arthashāstra*, 3. 4.)

(*e*) If a man offers accommodation to the runaway wife of another man,—except in times of distress,—he should be fined 100 *Paṇas* ;—if he did it in ignorance, or if the woman entered the house in spite of his telling her not to come in, then the man incurs no guilt.—(*Arthashāstra*, 3. 4.)

(*f*) If she has been ill-treated by her husband, a woman may seek shelter in the house of her husband's relatives, or a well-to-do co-villager, or a female ascetic, or her own relatives—provided there are no males in that house ; or to the house of a relative she may go, even though there be males there.—There would be nothing wrong in a woman going to the house of a relative, on such occasions as that of death in that family, or sickness, or some calamity, or childbirth. If the husband forbids her going in such cases, he is to be fined 12 *Paṇas*.

(*g*) If running away from her husband's house, a woman goes to another village, she is to be fined 12 *Paṇas*.—If she has gone out with a man with whom she might have intercourse, she shall be fined 24 *Paṇas* and be deprived of all the privileges of a wife ;—the man with whom she has gone out shall be fined 250 *Paṇas*, if he belongs to the same caste as the woman ; 500 *Paṇas* if he belongs

to a lower caste. If he is related to the woman, he suffers no punishment ; but if he has gone with her after having been forbidden by the husband, he shall be fined half the amount prescribed above.—(*Arthashāstra,* 3. 4.)

(*h*) On the road, if she retires to an out of the way place, and in the company of a suspicious character or of one whom she has been forbidden to meet,—then she has to suffer the penalties prescribed for Adultery.—(*Arthashāstra,* 3. 4.)

(*i*) If a maiden has been married by one of the righteous forms of marriage, and the bridegroom has gone abroad without telling her (and before she had connection with him) and nothing is heard of him, she shall wait for him for seven 'monthly courses'; for one year, if he is heard of ;—if he has gone away after telling her, and nothing is heard of him, then she shall await him for five 'monthly courses'; for ten, if he has been heard of ;—if he has gone away after having paid only part of the nuptial fee and is not heard of, he shall be awaited for three 'monthly courses';—for seven, if he is heard of;—if he has gone away after having fully paid up the nuptial fee, and is not heard of, he shall be awaited for 'five monthly courses'; for ten, if he has been heard of ;—after the lapse of the aforesaid period, having obtained the permission of righteous persons, she may select a husband of her own choice.—(*Arthashāstra,* 3. 4.)

(*j*) If the husband has gone abroad for a very long time, or has become a renunciate, or has died,—the wife shall wait for him for seven 'monthly courses';—for a year if she has had a child. After that she may have recourse to her husband's younger, uterine brother ; if there are several such brothers, then she shall take to the one next to her husband, or to one who may be the most righteous among them, or the one who may be the most capable to support a family, or the youngest, or the one who may be unmarried. In the absence of any such brothers, she may go to any other kind of her husband's brothers, or his nearest relative.—If she has recourse to any other man, apart from these, she shall suffer the penalty prescribed for Adultery.—(*Arthashāstra,* 3. 4.)

(*k*) When the husband has gone abroad promising to return soon, his wife shall wait for him for one year, if she has had no children,—for more than a year, if she has had children ; for twice this time, if he has gone after having made adequate provision for her.—If she has not been provided for by the husband, she may be supported by well-settled householders.—After the lapse of the said period, she shall be supported by her husband's relatives for four or eight years ; after that, they shall take from out of her property what they may have spent on her maintenance, and send her over to her father's relatives.—(*Arthashāstra,* 3. 4.)

(*l*) If the husband is a Brāhmaṇa and has gone abroad for study, the wife shall wait for him for ten years, if she has had no child ; for twelve years, if she has had a child.—If the husband is the king's officer and has gone abroad on duty, he shall be awaited as long as he lives.—If after the lapse of the aforesaid ten or twelve years, she bears a child from a man of the same caste as herself, she is not to be held guilty.—In the event of her relatives being unable, and other well-to-do householders being unwilling, to support her, she may choose any man for the sake of her maintenance.—(*Arthashāstra,* 3. 4.)

132. मनु 9. 75.] विधाय प्रोषिते वृत्तिं जीवेन्नियममास्थिता ।
प्रोषिते त्वविधायैव जीवेच्छिल्पैरगर्हितैः ॥

132. Where the husband has gone abroad after making provision for her maintenance, she shall live on, firmly devoted to restraint. If he has gone without providing for her, she shall maintain herself by unobjectionable industries.—(Manu, 9. 75.)

NOTES

'*Unobjectionable industries,*'—such as spinning, lace-making and the like. The 'objectionable' industries are the making of fans and such things.—(*Medhātithi.*)

133. याज्ञवल्क्य 1. 84.] क्रीडां शरीरसंस्कारं समाजोत्सवदर्शनम् ।
हास्यं परगृहे यानं त्यजेत् प्रोषितभर्तृका ॥

133. Sporting, adornment of the body, visiting assemblies and places of amusement, laughing, visiting other's houses,—all this should be avoided by a woman whose husband is absent.—(Yājña. 1. 84 ; in *Vivādaratnākara*, p. 438.)

134. बृहस्पति] प्रसाधनं नृत्यगीतसमाजोत्सवदर्शनम् ।
मांसं मद्याभियोगं च न कुर्यात् प्रोषिते पतौ ॥

134. Toilet, dancing, singing, visiting assemblies and places of amusement, meat-eating, wine-drinking,—all this should not be done during the husband's absence.—(Bṛhaspati in *Vivādaratnākara*, p. 439.)

135. विष्णु 25. 14.] मृते भर्तरि ब्रह्मचर्यं तदन्वारोहणं वा ॥

135. After the death of her husband, she shall preserve her chastity or ascend the funeral pyre after him.—(Viṣṇu, 25. 14 ; in *Vivādaratnākara*, p. 443.)

136. बृहस्पति] व्रतोपवासनिरता ब्रह्मचर्ये व्यवस्थिता ।
दमदानरता नित्यम् ॥

136. The widow shall be constantly devoted to fasts and observances, firm in celibacy, self-controlled and charitable.—(Bṛhaspati in *Vivādaratnākara*, p. 443.)

DUTY OF WIDOWS

137. मनु 8. 157—165.] कामं तु क्षपयेद्देहं पुष्पमूलफलैः शुभैः ।
न तु नामापि गृह्णीयात् पत्यौ प्रेते परस्य तु ॥
आसीतामरणात् क्षान्ता नियता ब्रह्मचारिणी ।
पतिं या नाभिचरति मनोवाग्देहसंयुता ॥
× × सद्भिः साध्वीति चोच्यते ॥

137. Well might she macerate her body by means of pure flowers, roots and fruits; but she should not even mention the name of another man, after her husband is dead;—till her death she should remain patient, self-controlled and chaste . . . She should not fail in her duty towards her husband, having her thought, speech and body well-controlled.—Such a woman is called 'good.'—(Manu, 8. 157—165.)

138. विवादरत्नाकर 442.] सर्वभार्याणां स्वगतभर्तृगतफलविशेषार्थिनीनां गर्भवती बालापत्यादिव्यतिरिक्तानां सहमरणानुमरणयोरधिकारः ॥

138. All those women who are desirous of acquiring special merit for their husbands and for themselves are entitled to 'self-immolation' either with, or after, their husbands;—but not those who are carrying or have young children and such others.—(*Vivādaratnākara*, p. 442.)

139. मनु 9. 59.] देवराद्वा सपिण्डाद्वा स्त्रिया सम्यङ् नियुक्तया ।
प्रजेप्सिताऽधिगन्तव्या सन्तानस्य परिक्षये ॥

139. On failure of issue, the woman, on being authorised, may obtain, in the proper manner, the desired offspring, either from her younger brother-in-law or from a *Sapiṇḍa*.—(Manu, 9. 59; also Yājña., Yama, Nārada, all in *Vivādaratnākara*, pp. 445—447.)

NOTES

The 'authorisation' is to be done by the widow's elders,—*i.e.*, her father-in-law, mother-in-law and so forth. This text, along with the following which contradicts it, has been taken as making the practice of *Niyoga* optional.—(*Medhātithi*.)

140. मनु 9. 64.] नान्यस्मिन् विधवा नारी नियोक्तव्या द्विजातिभिः ।
अन्यस्मिन् हि नियुञ्जाना धर्मं हन्युः सनातनम् ॥

140. By twice-born persons, the woman shall not be 'authorised' in regard to another person. If they do, they violate the eternal law.—(Manu, 9. 64.)

141. देवल] नष्टः प्रव्रजितः क्लीवः पतितो राजकिल्विषी ।
लोकान्तरगतो वाऽपि परित्याज्यः पतिः स्त्रिया ॥

141. When the husband is lost, or becomes a renunciate, or becomes impotent or an outcast, or is *afflicted with a fatal disease* ('*rājakilviṣī*'), is so explained,—or gone to the other world,—he may be abandoned by the woman.—(Devala in *Vivādaratnākara,* p. 447 ; Nārada, 12. 97.)

142. देवल] मृते भर्तरि जीवे वा स्त्री विन्देतापरं पतिम् ।
सन्तत्यनाशार्थतया न स्वातन्त्र्यं तु योषितः ॥

142. On the death of the husband,—or even when he is alive,—for the sake of progeny, the woman may have another husband ; but in this she cannot take action on her own account.—(Devala in *Vivādaratnākara*, p. 447.)

143. देवल] अष्टौ वर्षाण्युदीक्षेत ब्राह्मणी प्रोषितं पतिम् ।
अप्रसूता च चत्वारि परतोऽन्यं समाश्रयेत् ॥
क्षत्रिया षट् समास्तिष्ठेदप्रसूता समात्रयम् ।
वैश्या प्रसूता चत्वारि द्वे समेत्वप्रसूतिका॥
न शूद्रायाः स्मृतः कालो न च धर्मव्यतिक्रमः ।
विशेषतोऽप्रसूतायाः संवत्सरपरा स्थितिः ॥
जीवति श्रूयमाणे च स्यादेष द्विगुणो विधिः ।

143. When a man has gone abroad, and is not heard of, his wife, if she is a Brāhmaṇa, shall wait for him for eight years,—but only for four years, if she is childless,—and after that she may have recourse to another husband. If she is a Kṣattriya, she shall wait for six years,—or for three years, if childless.—If she is a Vaishya she is to wait for four years,—for two years if childless.—For the Shūdra there is no restriction regarding time, especially when she is childless ; the most that she may wait is a year.—If the husband be alive and

heard of, the time-limit for waiting is to be doubled.—(Nārada, 12. 98—100 ; Devala in *Vivādaratnākara*, p. 448.)

NOTES

On the strength of Bṛhaspati's declarations, such practices as those mentioned here and in Manu regarding *Niyoga*, are not applicable to the present age,—says *Vivādaratnākara* (p. 449).

(*a*) If her husband has degraded himself, or gone abroad, or, has committed a crime against the king, or has committed murder, or has become an outcast or impotent,—the woman may abandon him.—(*Arthashāstra*, 3. 2.)

(*b*) If the man seeks to be relieved of his wife, he should give her all that belongs to her and so free himself. If however the wife seeks deliverance from the husband, he shall not give her her *Strīdhana*.—But such deliverance is permissible only in the cases where the marriage has been in the unrighteous form (*Āsura* and the rest); *never* in cases of a righteous marriage.—(*Arthashāstra*, 3. 3.)

RE-MARRIAGE OF WOMEN

144. नारद 12. 45—52.] परपूर्वाः स्त्रियस्त्वन्याः सप्त प्रोक्ता यथाक्रमम् ।
पुनर्भूस्त्रिविधा तासां स्वैरिणी च चतुर्विधा ॥
कन्यैवाक्षतयोनिर्या पाणिग्रहणदूषिता ।
पुनर्भूः प्रथमा प्रोक्ता पुनः संस्कारकर्मणा ॥
कौमारं पतिमुत्सृज्य यात्वन्यं पतिमाश्रिता ।
पुनः पत्युर्गृहमियात् सा द्वितीया प्रकीर्तिता ॥
असत्सु देवरेषु स्त्री बान्धवैर्या प्रदीयते ।
सवर्णाय सपिण्डाय तृतीया सा प्रकीर्तिता ॥
स्त्री प्रसूताऽप्रसूता वा पत्यावेव तु जीवति ।
कामात्समाश्रयेदन्यं स्वैरिणी प्रथमा च सा ॥
मृते भर्तरि या नारी देवरादीनपास्य तु ।
कामतस्तु भजेदन्यं सा द्वितीया प्रकीर्तिता ॥
देशापहृतविक्रीता क्षुत्तृष्णाव्यसनार्दिता ।
तवाहमित्युपगता सा तृतीया प्रकीर्तिता ॥
देशधर्मानवेक्ष्य स्त्री गुरुभिर्या प्रदीयते ।
उत्पन्नसाहसाऽन्यस्मै साऽन्तिमा स्वैरिणी स्मृता ॥

144. Besides the lawful wives, seven other kinds of wives have been mentioned, who have been previously enjoyed by another man: Among these seven, three have been called 'Remarried' (*Punarbhū*) and four, 'Wanton' (*Svairiṇī*).

(*a*) A maiden not deflowered, but joined to a man by the joining of hands, if married to another man, is the first kind of 'remarried woman'; in her case the marriage ceremony is performed once more in the second case. (*b*) One who, after having left the husband of her youth, betakes herself to another man, returns to the house of her former husband, is called the second kind of 'remarried woman.' (*c*) When a woman, on failure of brothers-in-law, is delivered by her relations to a *Sapiṇḍa* of the same caste, she is the third kind of 'remarried woman.' (*d*) When a woman, whether with or without children, goes to live with another man through love,—though her husband is alive,—she is the first kind of 'wanton woman.' (*e*) When a woman,—after the death of her husband, rejects her brother-in-law or other relations who have come to her, and unites herself with a stranger through love, she is called the second kind of 'wanton woman.' (*f*) One who, having come from a foreign country,—or having been purchased with money,—or being oppressed with hunger or thirst,—gives herself up to a man, saying 'I am thine,'—she is the third kind of 'wanton woman.' (*g*) When a woman, after having been given in marriage by her elders, in a manner corresponding with the usages of her country, is afterwards married to another man in an improper manner, she is the last kind of 'wanton woman.'—(Nārada, 12. 45—52; in *Vivāda-ratnākara*, pp. 450-451.)

145. मनु 5. 162.] न द्वितीयश्च साध्वीनां क्वचिद् भर्तोपदिश्यते ।

145. For good women, a second husband is nowhere ordained.—(Manu, 5. 162.)

146. मनु 5. 163.] पतिं हित्वाऽपकृष्टं स्वमुत्कृष्टं या निषेवते ।
निन्द्यैव सा भवेल्लोके परपूर्वेति चोच्यते ॥

146. She who, having abandoned her own husband who is inferior, has recourse to another person who is superior, becomes contemptible in this world and is called a 'remarried woman.'—(Manu, 5 163.)

147. याज्ञवल्क्य 1. 57.] अक्षता च क्षता चैव पुनर्भूः संस्कृता पुनः ।
स्वैरिणी या पतिं हित्वा सवर्णं कामतः श्रयेत् ॥

147. The 'remarried woman' is of two kinds: (1) One who has already had sexual intercourse before marriage (to either the same or another man), and (2) one who has not had sexual intercourse but had only been married to one man before being married to the second man.—The 'wanton woman' is she who abandons her husband and betakes herself to another man of the same caste as herself, through love (without being married to him).—(Yājña. 1. 57.)

CHAPTER XIX

MANSLAUGHTER AND OTHER CRIMES

DEFINITIONS

1. नारद 14. 6.] व्यापारो विषशस्त्राद्यैः परदारप्रधर्षणम् ।
प्राणापराधि यच्चान्यत् उक्तमुत्तमसाहसम् ॥

1. Killing a man by poison, weapons or other means, making advances to another man's wife, and whatever other life-encompassing crimes may be imagined,—is called 'Crime of the Highest Degree.'—(Nārada, 14. 6; in *Vivādaratnākara*, p. 349.)

2. बृहस्पति] मनुष्यमारणं चौर्यं परदाराभिमर्शनम् ।
पारुष्यमुभयं चेति साहसं स्याच्चतुर्विधम् ॥

2. Man-slaughter, Theft, making advances to another man's wife, and Assault (Abuse and Hurt) are the four forms of crime.—(Bṛhaspati in *Smṛtichandrikā*, p. 722; Nārada, 14. 2.)

PENALTIES

3. नारद 14. 7—9.] तस्य दण्डः क्रियापेक्षः प्रथमस्य शतावरः ।
मध्यमस्य तु शास्त्रज्ञैर्दृष्टः पञ्चशतावरः ॥
वधः सर्वस्वहरणं पुरान्निर्वासनाङ्कने ।
तदङ्गच्छेद इत्युक्तो दण्ड उत्तमसाहसे ॥

3. The punishment inflicted must be proportionate to the heaviness of the crime committed; but it shall not be less than a hundred for a crime of the first degree, not less than five hundred for a crime of the middle degree; corporal punishment, confiscation of the entire property, banishment, branding and amputation of the offending limb are also prescribed for crimes of the highest degree.—(Nārada, 14. 7—9; in *Vivādaratnākara*, p. 351.)

NOTES

The exact penalty to be inflicted shall depend upon the character of the person convicted.—(*Vivādaratnākara*, p. 351.)

4. नारद] तत्कारिणो नार्थदण्डैः शास्या वध्याः प्रयत्नतः ॥

4. For those who commit crimes of the worst kind, there is no fine ; they should be punished with corporal punishment and death.—(Nārada in *Smṛtichandrikā*, p. 722.)

5. याज्ञवल्क्य 2. 232-233.] अभ्याक्रोशातिक्रमकृत् भ्रातृभार्याप्रहारदः ।
सन्दिष्टस्याप्रदाता च समुद्रगृहभेदकृत् ।
सामन्तकुलिकादीनामपकारस्य कारकः ।
पञ्चाशत्पणिको दण्ड एषामिति विनिश्चयः ॥

5. One who insults or disobeys his elders, one who strikes his elder brother's wife, one who does not give what he has promised, one who breaks into a sealed room, one who does injury to his neighbours, relations and others,—each one of these shall be fined 50 *Paṇas*.—(Yājña. 2. 232-233.)

NOTES

'*And others*'—includes inhabitants of the same village and of the same country—(*Mitākṣarā*) ;—other good men—(*Aparārka*).

6. याज्ञवल्क्य 234—237.] स्वच्छन्दविधवागामी विक्रुष्टेऽनभिधावकः ।
अकारणे च विक्रोष्टा चण्डालश्चोत्तमान् स्पृशन् ॥
शूद्रप्रव्रजितानां च दैवे पित्र्ये च भोजकः ।
अयुक्तं शपथं कुर्वन् अयोग्यो योग्यकर्मकृत् ॥
वृषशूद्रपशूनां च पुंस्त्वस्य प्रतिघातकृत् ।
साधारणस्यापलापी दासीगर्भविनाशकृत् ॥
पितापुत्रस्वसृभ्रातृदम्पत्याचार्यशिष्यकाः ।
एषामपतितान्योन्यत्यागी च शतदण्डभाक् ॥

6. One who without justification, has intercourse with a widow, one who does not respond to a call for help, one who calls for help without any grounds, a Chāṇḍāla who wilfully touches superior men, one who feeds Shūdra mendicants at rites in honour of Gods and *Pitṛs*, one who takes an improper oath, one who does a work for which he is not qualified, one

who has deprived bulls (or trees) and other small animals of their virility, one who deals dishonestly with a common property, one who destroys the embryo of a slave-girl,—as also any one from among the following (father and son, sister and brother, husband and wife, teacher and pupil) who forsakes another without the latter being an outcast; each one of these should be fined 100 *Paṇas*.—(Yājña. 2. 234—237.)

NOTES

'Trees' is another reading for 'bulls.' Trees are said to be deprived of their virility when, by means of the injection of certain medicines, they are rendered incapable of bearing fruit.—(*Vivādaratnākara*, p. 355.)

7. विष्णु 5. 111—119.] साधारणापलापी च प्रेषितस्याप्रदाता च पितृपुत्राचार्ययाज्यर्त्विजामन्योऽन्यमपतितत्यागी च। शूद्रप्रव्रजितानां दैवे पित्र्ये भोजकश्चायोग्यकर्मकारी च समुद्रगृहभेदकश्चानियुक्तशपथकारी च पशूनां पुंस्त्वाभिघातकारी च ॥

7. A fine of 100 *Paṇas* for falsely denying the possession of common property; for not delivering what has been sent (for a God or a Brāhmaṇa); also for father and son, teacher and pupil, sacrificer an dofficiating priest,—if one should forsake the other, provided that he has not become an outcast; also for hospitably entertaining a Shūdra or religious ascetic at an oblation to the Gods or to the *Pitṛs*; also for following an unlawful occupation; and for breaking open a house on which seal has been laid; for making an oath without being asked to do so; for depriving cattle of their virility.—(Viṣṇu, 5. 111—119; in *Vivādaratnākara*, p. 354.)

8. मनु 8. 388.] ऋत्विजं यस्त्यजेद् याज्यो याज्यं चर्त्विक् त्यजेद्यदि ॥
शक्तं कर्मण्यदुष्टं च तयोर्दण्डः शतं शतम् ।

8. If a sacrificer forsakes the officiating priest, and if an officiating priest forsakes the sacrificer,—each being able to do the work and free from disqualifications,—his punishment shall be 100.—(Manu, 8. 388.)

NOTES

This rule is applicable, not only to the case of the Sacrificer and the Priest, but also to that of the Teacher and the Pupil; as Gautama says (21. 12-13)—'The

Priest and the Preceptor are to be forsaken only if they are deficient in learning, or happen to serve an outcast; by forsaking them otherwise, one becomes an outcast.—(*Medhātithi.*)

9. मनु 8. 389.] न माता न पिता न स्त्री न पुत्रस्त्यागमर्हति ।
त्यजन्नपतितानेतान् राज्ञा दण्ड्यः शतानि षट् ॥

9. Neither the mother, nor the father, nor the wife, nor the son, deserves to be forsaken; he who forsakes these, unless they are outcasts, should be fined 600.—(Manu, 8. 389.)

NOTES

As regards the *mother* Shātātapa has declared that 'to the son the mother never becomes an outcast.'—The 'forsaking' of the mother would consist in turning her out of the house; that of the outcast wife would consist in giving up all intercourse with her and forbidding her to do household work; but food and clothing should continue to be given.—(*Medhātithi.*)

The punishment here laid down is for one who has forsaken *all* the persons named—says *Aparārka* (p. 823).

'*Forsakes*'—*i.e.*, omits to do the honour that is their due.—The punishment here laid down is for a man who, while cognizant of what is right and wrong, forsakes *any one* of the persons mentioned.—(*Vivādaratnākara*, p. 357.)

'*Forsakes*'—*i.e.*, omits to supply them with food and clothing.—(*Vivādachintāmaṇi*, p. 154.)

10. शङ्खलिखित] न मातापित्रोरन्तरमिच्छेत् पुत्रः । माता कामं पोषणीया । अत्याज्या माता । तथा पिता सपिण्डा गुणवन्तः । सर्वे वाऽत्याज्याः । यस्त्यजेदपतितांस्तान् स दण्डं प्राप्नुयाद् द्विगुणं शतम् ॥

10. The son should never seek separation from his mother and father; he shall maintain them. The mother should never be forsaken; so also the father and also *Sapiṇḍas* with good qualities. If one forsakes them, unless they are outcast, one shall be fined 200.—(Shaṅkha-Likhita in *Aparārka*, p. 823; in *Vivādaratnākara*, p. 357.)

11. शङ्खलिखित] न मातापितरावतिक्रामेत् न गुरुम् । त्रयाणां व्यतिक्रमादङ्गच्छेदः ।

11. One should never insult the mother, the father or the teacher ; if he does, his (offending) limb should be cut off.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 358 ; in *Vivādachintāmaṇi*, p. 155 ; and in *Aparārka*, p. 823.)

NOTES

'*Insult*' here stands for striking with the feet ; the limb to be cut off is the one with which he has offended.—(*Vivādaratnākara* and *Aparārka*.)

12. विष्णु 5. 91 —97.] येषां देयः पन्थास्तेषामपथदायी कार्षापणानां विंशतिं दण्ड्यः—आसनार्हस्यासनमददच्च—पूजार्हमपूजयंश्च—प्रातिवेश्यब्राह्मणनिमन्त्रणातिक्रमी च—निमन्त्रयित्वा भोजनादायी च—निमन्त्रितस्तथेत्युक्त्वा अभुञ्जानः स्वर्णमाषकम् । निकेतयितुश्च द्विगुणम् ।

12. He who does not make way for one for whom way should be made, shall be fined 25 *Kārṣāpaṇas* ; the same for omitting to offer a seat to one to whom it should be offered ; for neglecting to worship one who should be worshipped ; for neglecting to invite a Brāhmaṇa neighbour, or for offering him no food when invited. He who refuses to eat, after having received and accepted an invitation shall pay a gold *Māṣaka* as fine, to the king and also double the quantity of food to the host.—(Viṣṇu, 5. 91—97.)

13. मनु 8. 392.] प्रातिवेश्यानुवेश्यौ च कल्याणे विंशतिद्विजे ।
अर्हावभोजयन् विप्रो दण्डमर्हति माषकम् ॥

13. If at a festival twenty twice-born men have been invited, a Brāhmaṇa does not entertain his frontal and back neighbours who are quite worthy, he should be fined one (gold) *Māṣa*.—(Manu, 8. 392.)

NOTES

The '*māṣa*' meant here is *of gold* (*Medhātithi*) ;—of silver (*Vivādaratnākara*, p. 358).

'*Does not entertain*'—'after having invited them to the festival in his house'—adds *Medhātithi*.

14. मत्स्यपुराण] आमन्त्रितो द्विजो यस्तु वर्तमानः प्रतिग्रहे ।
निष्कारणं न गच्छेत् तु स दाप्योऽष्टशतं दमम् ॥

14. If a Brāhmaṇa invited to receive a gift fails to go, without sufficient reason, he shall be fined 108 *Paṇas*.—(Matsyapurāna in *Vivādaratnākara*, p. 355.)

15. मत्स्यपुराण] तरिजः स्थलजं शुल्कं गृह्णन् दाप्यः पणान्दश ।

15. If the toll-collector at river-crossings realises the toll due on dry land, he shall be fined 10 *Paṇas*.—(Matsya-purāna in *Vivādaratnākara*, p. 355.)

16. मनु 8. 393.] श्रोत्रियः श्रोत्रियं साधुं भूतिकृत्येष्वभोजयन् ।
तदन्नं द्विगुणं दाप्यो हैरण्यं चैव माषकम् ॥

16. The Vedic scholar, who does not entertain a worthy Vedic scholar at auspicious rites, should be made to pay twice the quantity of the meal and also a *Māṣa* of gold—(Manu, 8. 393.)

NOTES

This refers to persons who are not neighbours ; it pertains to fellow-students.—'*Auspicious rites*'—at which twenty men are fed.—'*Twice the quantity of the meal*' is to be given to the fellow-scholar, and the '*Māṣa of gold*' to the king, as fine.—(*Medhātithi*.)

17. शङ्खलिखित] पितापुत्रयोर्विरोधे साक्षी न तिष्ठेत् । यस्तिष्ठेत् स दण्ड्यस्त्रीन् कार्षापणान् यश्चान्तरे तिष्ठेत् सोऽप्यष्टशतं दाप्यः ।

17. One should not be a witness in a dispute between father and son; if one does, one should be fined 3 *Kārṣāpaṇas*.—He who comes between them should be fined 108.—(Shaṅkha-Likhita in *Aparārka*, p. 824.)

18. विष्णु 5. 120-121.] पितृपुत्रविरोधसाक्षिणां दशपणो दण्डः ।
यस्तयोरन्तरे तस्योत्तमसाहसः ।

18. The fine for witnesses in a dispute between father and son shall be 10 *Paṇas*. For one who acts as surety for the parties,—in a dispute between father and son,—shall suffer the highest amercement. —(Viṣṇu, 5. 120-121 ; in *Aparārka*, p. 824.)

NOTES

'*Surety*'—The word rendered thus is '*antare*,' which has been explained as 'surety' in *Aparārka* on Yājña. 2. 239 ; according to *Vivādaratnākara*, however, the meaning is 'one who *comes between them* and incites the quarrel.'

19. याज्ञवल्क्य 2. 239.] पितापुत्रविरोधे तु साक्षिणां त्रिपणो दमः ।
अन्तरे तु तयोर्यः स्यात् तस्याप्यष्टगुणो दमः ।

19. Those who agree to become witnesses in a dispute between father and son, should be fined 3 *Paṇas* ; and one who comes between them (as surety) in such a dispute shall be fined 24 *Paṇas*.—(Yājña. 2. 239.)

NOTES

'*Surety*'—for the wager that may have been laid by the parties—(*Mitākṣarā*) ;—for the payment of the amount under dispute—(*Aparārka*).

'*Agree to be witnesses*'—without trying to settle the dispute ; and in reality helping to aggravate it.—(*Mitākṣarā*.)

This same rule refers also to disputes between husband and wife and such other relatives.—(*Mitākṣarā*.)

20. विष्णु 5. 98—103.] अभक्ष्येण ब्राह्मणस्य दूषयित्वा षोडश सुवर्णान् । जात्यपहारिणा शतम् । सुरया वध्यः । क्षत्रियं दूषयितुस्तदर्धम् । वैश्यं दूषयितुस्तदर्धम् । शूद्रं दूषयितुः प्रथमसाहसम् ॥

20. He who insults a Brāhmaṇa by offering him uneatable food shall be fined 16 '*Suvarṇas*.'—He who offers him such food as would make him lose his caste, shall be fined 100 '*Suvarṇas*.'—For offering spirituous liquor, he shall be put to death.—If he insults a Kṣattriya in the same manner, the fine shall be half ; half of that again in the case of insulting a Vaishya ; in that of Shūdra, the first amercement.—(Viṣṇu, 5. 98—103 ; in *Vivādaratnākara*, p. 360 ; and in *Vivādachintāmaṇi*, p. 155.)

NOTES

This refers to cases where the persons insulted are possessed of specially good qualities.—(*Vivādaratnākara.*)

21. याज्ञवल्क्य 2. 295.] द्विजं प्रदूष्याभक्ष्येण दण्ड्य उत्तमसाहसम् ।
क्षत्रियं मध्यमं वैश्यं प्रथमं शूद्रमर्धिकम् ॥

21. For insulting a Brāhmaṇa by offering him uneatable food, one should suffer the highest amercement; for insulting a Kṣattriya, the middle amercement; for insulting a Vaishya, the lowest amercement; and half of that for insulting a Shūdra.—(Yājña. 2. 295.)

NOTES

'*Half*'—*i.e.*, 125 *Paṇas*.—(*Vivādachintāmaṇi*, p. 155.)

22. मनु (?)] अभक्ष्यमथवा पेयं वैश्यादीन् प्राशयन् द्विजान् ।
जघन्यमध्यमोत्कृष्टान् दण्डानर्हेद् यथाक्रमम् ॥
पणाः शूद्रे भवेद् दण्डश्चतुष्पञ्चाशदेव तु ।
शासितारः स्वयं कार्या राज्ञानिर्विषयास्तु ते ॥

22. A man who makes a Vaishya or a Kṣattriya or a Brāhmaṇa eat or drink what should not be eaten or drunk should suffer the lowest, the middle or the highest amercement respectively,—and in the case of a Shūdra, the fine should be 54 *Paṇas*. Those who themselves eat such food as should not be eaten should be banished from the kingdom.—(Manu in *Vivādaratnākara*, p. 361.)

NOTES

This refers to such Vaishya, etc., as are not possessed of high qualifications—(*Vivādaratnākara*, p. 311);—to very low class of Shūdras.—(*Vivādachintāmaṇi*, p. 155.)

23. विष्णु 5. 173.] जातिभ्रंशकरस्याभक्ष्यस्य भक्षयिता विवास्यः ॥

23. The man who eats such food as leads to loss of caste should be banished.—(Viṣṇu, 5. 173; in *Vivādaratnākara*, p. 362; and in *Aparārka*, p. 821.)

24. याज्ञवल्क्य 2. 300.] जारं चौरेत्यभिवदन् दाप्यः पञ्चशतं दमम् ।
उपजीव्य धनं मुञ्चन् तदेवाष्टगुणीकृतम् ॥

24. A man who declares his wife's paramour to be a thief should be fined 500; if he receives a bribe from him and permits him to escape should be fined eight times that amount.—(Yājña. 2. 300.)

NOTES

When a man is caught in a house who happens to be the paramour of a lady of the family, if the master of the house, for the purpose of saving his family from disgrace, declares him to be a thief who has come to steal, that master is to be fined 500; and 4,000, if he permits the man to escape on receiving a bribe from him.—(*Vivādaratnākara*, p. 362; *Vivādachintāmaṇi*, p. 156.)

25. याज्ञवल्क्य 2. 302.] मृताङ्गलग्नविक्रेतुर्गुरोस्ताडयितुस्तथा ।
राजयानासनारोढुर्दण्डो मध्यमसाहसः ॥

25. One who sells clothes obtained from dead bodies, one who strikes his teacher, and one who rides on the king's conveyances or sits on the king's seat,—should suffer the middle amercement.—(Yājña. 2. 302.)

NOTES

'*Rides—sits*'—without the king's permission.—'*Sells*'—without declaring their real character.—(*Vivādaratnākara*, p. 362.)

26. मनु 9. 290.] अभिचारेषु सर्वेषु कर्तव्यो द्विशतो दमः ।
मूलकर्मणि चानाप्तौ कृत्यासु विविधासु च ॥

26. In all cases of malevolent rites, the fine shall be 200; as also in a case of magic spell by persons not related; as also in those of various kinds of sorcery.—(Manu, 9. 290.)

NOTES

'*Malevolent rites*'—*i.e.*, encompassing death by means of incantations and such other means. If any one performs such a rite, the fine shall be 200, if the death aimed at is *not* brought about; in case the death does come about, then the punishment shall be the same as in the case of 'man-slaughter.'—(*Medhātithi.*)

The performance of these rites is a crime when aimed against a person who has done no wrong—says *Vivādaratnākara* (p. 362).

27. मनु 9. 286.] अदूषितानां द्रव्याणां दूषणे भेदने तथा ।
मणीनामपवेधे च दण्डः प्रथमसाहसः ॥

27. For adulterating unadulterated commodities, and for breaking or wrongly boring gems, the punishment shall be the first amercement.—(Manu, 9. 286.)

NOTES

'*Gems*' are classed as 'good,' 'bad,' and 'indifferent'; the punishment therefore shall be regulated in accordance with the class to which the gem in question may belong; in the case of 'bad' gems, the fine shall be the lowest amercement; in that of 'indifferent' gems, the middle amercement; and in that of 'good' gems, the highest amercement. (*Medhātithi.*)

28. मनु 10. 96.] यो लोभादधमो जात्या जीवेदुत्कृष्टकर्मभिः ।
तं राजा निर्धनं कृत्वा क्षिप्रमेव प्रवासयेत् ॥

28. If a man of low caste, through greed, subsists by the occupations of his superiors,—him the king shall deprive of his property and quickly banish him.—(Manu, 10. 96.)

29. याज्ञवल्क्य 2. 303.] विप्रत्वेन च शूद्रस्य जीवतोऽष्टशतो दमः ।

29. If a Shūdra subsists by disguising himself as a Brāhmaṇa, he should be fined 800.—(Yājña. 2. 303.)

NOTES

If, through the disguise, he contracts marriage-relationships with Brāhmaṇas, he shall suffer death.—(*Aparārka.*)

30. मनु 9. 285.] सङ्क्रमध्वजयष्टीनां प्रतिमानां च भेदकः ।
प्रतिकुर्याच्च तत् सर्वं पञ्च दद्याच्छतानि च ॥

30. He who destroys a crossing, a flag, a pole or images, shall repair the whole of it and shall pay a fine of 500.—(Manu, 9. 285.)

NOTES

'*Crossing*'—a contrivance by which people cross over waterways.—(*Medhātithi.*) This refers to the case of crude images—says *Vivādaratnākara* (p. 364).

31. कात्यायन] हरेद् भिन्द्याद् दहेच्चापि देवानां प्रतिमां यदि ।
तद्गृहं चैव यो भिन्द्यात् प्राप्नुयात् पूर्वसाहसम् ॥

31. A man who steals, breaks or burns the image of gods,—or demolishes a temple,—should suffer the first amercement.—(Kātyāyana in *Vivādaratnākara*, p. 364 ; and in *Vivādachintāmaṇi*, p. 157.)

32. विष्णु 5. 174.] अभक्ष्यस्य चाविक्रेयस्य विक्रयी देवप्रतिमाभेदकश्च उत्तमसाहसं दण्ड्यः ॥

32. One who sells uneatable food, or such things as should not be sold,—or breaks the image of a god,—should suffer the highest amercement.—(Viṣṇu, 5. 174 ; in *Vivādaratnākara*, p. 364 ; *Vivādachintāmaṇi*, p. 158 ; and in *Aparārka*, p. 822.)

33. नारद] अविक्रेयानि विक्रीणन् ब्राह्मणः प्रच्युतः पथः ।
मार्गे पुनरवस्थाप्यो राज्ञा दण्डेन भूयसा ॥

33. If a Brāhmaṇa, deviating from the right path, sells what should not be sold, the king shall bring him to the right path by means of heavy punishment.—(Nārada in *Vivādaratnākara*, p. 364 ; and in *Aparārka*, p. 822.)

34. शङ्खलिखित] प्रतिमारामकूपसङ्क्रमध्वजसेतुनिपानभङ्गेषु तत्समुत्थापनं प्रतिसंस्कारोऽष्टशतं च ॥

34. For the breaking of images, gardens, wells, bridges, flags, dams or drinking pits,—the man should be made to repair them and to pay a fine of 108.—(Shaṅkha-Likhita in *Vivādaratnākara*, p, 364 ; and in *Vivādachintāmaṇi*, p. 158.)

NOTES

This refers to the breaking of images of superior quality ; for the images of inferior quality, see 30 above.—(*Vivādaratnākara*, p. 364.)

35. विष्णु] सेतुभेदकृतश्च [हन्यात्] ।

35. Those who break dams—the king shall put to death.—(Viṣṇu in *Vivādaratnākara*, p. 365 ; and in *Vivādachintāmaṇi*, p. 158.)

NOTES

This refers to *large* dams.—(*Vivādachintāmaṇi*, p. 158.)

36. मनु 9. 281.] यस्तु पूर्वनिविष्टस्य तडागस्योदकं हरेत् ।
आगमं वाप्यपां भिन्द्यात् स दाप्यः पूर्वसाहसम् ।

36. If a man takes away the water of an ancient tank—or cuts off its supply of water,—he shall suffer the lowest amercement.—(Manu, 9. 281.)

37. मनु 9. 279.] तडागभेदकं हन्यात् अप्सु शुद्धवधेन वा ।
तद्वापि प्रतिसंस्कुर्यात् दाप्यश्चोत्तमसाहसम् ॥

37. If a man breaks open a tank, he shall be slain in water, or by a simple form of death; or he may repair the damage and suffer the highest amercement.—(Manu, 9. 279.)

38. शङ्खलिखित] वापीतडागोदपानभेदमार्गरसद्रव्यदूषणेऽदासीदास-
सम्प्रदानकरणे [शारीरोऽङ्गच्छेदो वा] ।

38. For breaking a tank or a pond or a waterpit,—for spoiling a path or liquids,—for giving as a slave-girl one who is not a slave,—either death or cutting off of the limb.—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 365; and in *Vivādachintāmaṇi*, p. 165.)

NOTES

'*Spoiling a path*'—consists in scattering sharp nails or thorns over it.—(*Vivādaratnākara*.)

39. याज्ञवल्क्य 2. 278.] विप्रदुष्टां स्त्रियं चैव पुरुषघ्नीमगर्भिणीम् ।
सेतुभेदकरीं चाप्सु शिलां बद्ध्वा प्रवेशयेत् ॥

39. A woman who is very unchaste, or has killed a man, or has broken a dam,—shall have a piece of stone tied round her neck and be drowned in water; provided she is not with child.—(Yājña. 2. 278.)

40. याज्ञवल्क्य 2. 279.] विषाग्निदां पतिगुरुनिजापत्यप्रमापणीम् ।
विकर्णकरनासौष्ठीं कृत्वा गोभिः प्रमापयेत् ॥

40. A woman who has administered poison, or has set fire, or has killed her husband or her elder or her child, should

have her ears, hands and nose cut off and then gored to death by bulls [provided she is not with child].—(Yājña. 2. 279.)

NOTES

'*Set fire*'—to a house in the village.—'*By means of bulls*'—she shall have her legs tied to the bulls and dragged by them to death.—(*Mitākṣarā* and *Aparārka*.) *Aparārka* reads '*prāvasayet*' (though it notes and explains the other reading '*pramāpayet*' also), and explains it as 'she shall be placed upon a bull and banished from the country.'

'*Provided, etc.*'—This proviso contained in the preceding text has to be construed here also.—(*Mitākṣarā*.)

41. यम] उल्काग्निदापकाश्चौरा घातकाश्चोपघातकाः ।
स्वशरीरेण दण्ड्याः स्युः ॥

41. Those who set fire to houses, thieves, murderers and subordinate murderers should suffer corporal punishment.—(Yama in *Vivādaratnākara*, p. 366.)

42. याज्ञवल्क्य 2. 282.] क्षेत्रवेश्मवनग्रामविवीतखलदाहकाः ।
राजपत्न्यभिगामी च दग्धव्यास्तु कटाग्निना ॥

42. Those who set fire to fields, houses, forests, pasture-lands or threshing enclosures, and those who have intercourse with the king's wives shall be burnt in burning mats.—(Yājña. 2. 282.)

NOTES

'*Fields*'—with ripe corns standing.—'*Forests*'—or gardens.—(*Mitākṣarā*.)

43. कात्यायन] प्राकारं भेदयेद् यस्तु पातयेच्छादयेत्तथा ।
बध्नीयादम्भसो मार्गं प्राप्नुयात् पूर्वसाहसम् ॥

43. One who breaks a wall, or pierces it, or pulls it down,—and one who dams up a waterway,—shall suffer the lowest amercement.—(Kātyāyana in *Vivādaratnākara*, p. 367.)

44. मनु 9. 289.] प्राकारस्य च भेत्तारं परिखाणां च पूरकम् ।
द्वाराणां चैव भंक्तारं क्षिप्रमेव प्रवासयेत् ॥

44. He who breaks a wall, or fills up a ditch, or breaks a gate shall be instantly banished.—(Manu, 9. 289.)

45. मनु 9. 275.] राज्ञः कोषापहर्तॄंश्च प्रातिकूल्येष्ववस्थितान् ।
घातयेद्विविधैर्दण्डैररीणां चोपजापकान् ॥

45. Those who rob the king's treasury, those who are disaffected towards him, and those who conspire with his enemies,—the king shall strike with various forms of punishment.—(Manu, 9. 275.)

NOTES

'*Disaffected, etc.*'—*e.g.*, those who obstruct the king's efforts to import rare articles :—such as the coal-black horse which is rare for Easterners, or the elephant which is rare for the Northerners :—or try to turn his friends into enemies, and so forth.—The punishment need not be *death* in all these cases.—(*Medhātithi.*)

46. मनु 7. 124.] ये कार्यिकेभ्योऽर्थमेव गृह्णीयुः पापचेतसः ।
तेषां सर्वस्वमादाय राजा कुर्यात् प्रवासनम् ॥

46. Those wicked-minded officials who receive bribes from men of business should have their entire property confiscated and be banished.—(Manu, 7. 124.)

47. मनु 9. 231.] ये नियुक्तास्तु कार्येषु हन्युः कार्याणि कार्यिणाम् ।
... ... तान्निस्स्वान् कारयेन्नृपः ॥

47. If the king's officials hamper the business of suitors, the king shall confiscate their entire property.—(Manu, 9. 231; in *Vivādaratnākara*, p. 367 ; Yājña. in *Vivādachintāmaṇi*, p. 160.)

48. याज्ञवल्क्य (?)] ये राष्ट्राधिकृतास्तेषां चारैर्ज्ञात्वा विचेष्टितम् ।
साधून् सम्मानयेद्राजा विपरीतांस्तु घातयेत् ।

48. The king shall learn, through spies, all about the doings of his officials ; those found honest he shall honour, and those dishonest he shall put to death ; those found to be addicted to bribery he shall dispossess of all belongings and banish.—(Yājña. in *Vivādaratnākara*, p. 368 ; and in *Vivādachintāmaṇi*, p. 160.)

49. याज्ञवल्क्य 2. 243.] अबंध्यं यश्च बध्नाति बंध्यं यश्च प्रमुञ्चति ।
अप्राप्तव्यवहारं च स दाप्यो दममुत्तमम् ॥

49. The officer who imprisons a man who (being guiltless) should not be imprisoned,—or lets go a guilty person,—or lets go an accused without trial,—shall suffer the highest amercement.—(Yājña. 2. 243.)

NOTES

The above rendering is according to *Aparārka*. According to *Mitākṣarā* (reading '*baddham*' for '*bandhyam*') the text mentions only two crimes—imprisoning the guiltless, and letting go the accused without trial.—In either case, *Mitākṣarā* adds the qualifying clause 'if it is done without the king's orders.'

50. विष्णु] दण्ड्यमुन्मोचयन् दण्डात् द्विगुणं दण्डमावहेत् ॥

50. If an officer omits to fine a guilty person, the officer shall be made to pay double the amount of the fine.—(Viṣṇu in *Aparārka*, p. 825; in *Vivādachintāmaṇi*, p. 161; and in *Vivādaratnākara*, p. 368.)

51. कात्यायन] राजक्रीडासु ये सक्ता राजवृत्त्युपजीविनः ।
अप्रियस्य तु वक्तारो वधं तेषां प्रकल्पयेत् ॥

51. Those who are addicted to sports reserved for the king,—or have recourse to the functions of the king,—or talk ill of the king—shall be put to death.—(Kātyāyana in *Vivādaratnākara*, p. 368; and in *Vivādachintāmaṇi*, p. 161.)

52. कात्यायन] प्रतिरूपस्य कर्तारः प्रेक्षणाः प्रकराश्च ये ।
राजार्थमोषकाश्चैव प्राप्नुयुर्विविधं वधम् ॥

52. Those who imitate the dress of the king, or are too much addicted to amusements, or levy extortionate demands, or misappropriate the royal dues,—should suffer various forms of death.—(Kātyāyana in *Vivādaratnākara*, p. 369; in *Vivādachintāmaṇi*, p. 161.)

53. विष्णु] ये चाकुलीना राज्यमभिकामयेयुः ।

53. Those who, not belonging to the royal family, aspire to the kingdom, should be killed.—(Viṣṇu in *Vivādaratnākara*, p. 369; and in *Vivādachintāmaṇi*, p. 162.)

54. याज्ञवल्क्य 2. 294.] ऊनं वाऽप्यधिकं वाऽपि लिखेद् यो राजशासनम् ।
पारदारिकचौरौ वा मुञ्चतो दण्ड उत्तमः ॥

54. If the royal scribe enters in a royal grant something more or less than what has been ordered by the king,—and if a police officer lets go an adulterer or a thief,—he should suffer the highest amercement.—(Yājña. 2. 294.)

55. शङ्खलिखित] कूटशासनप्रयोगे राजशासनप्रतिषेधे कूटतुलामान-
प्रतिमानव्यवहारे शारीरोऽङ्गच्छेदो वा ।

55. If one forges a document,—or disobeys a royal command,—or makes use of false scales, weights or measures,—he should suffer death or the cutting off of a limb—(Shaṅkha-Likhita in *Vivādaratnākara*, p. 369; and in *Vivādachintāmaṇi*, p. 162.)

56. कात्यायन] प्रमाणेन तु कूटेन मुद्रया वाऽपि कूटया ।
कार्यन्तु साधयेद्यो वै स दाप्यो दण्डमुत्तमम् ॥

56. If a man makes use of false weights and measures, or of false coins, he should suffer the highest amercement.—(Kātyāyana in *Vivādaratnākara*, p. 370; and in *Vivādachintāmaṇi*, p. 162.)

57. मनु 9. 232.] कूटशासनकर्तॄंश्च प्रकृतीनां च दूषकान् ।
स्त्रीबालब्राह्मणघ्नांश्च हन्याद् द्विट्सेविनस्तथा ॥

57. Forgers of royal edicts,—sowers of disaffection among the people,—slayers of infants, women and Brāhmaṇas and those serving his enemies,—the king shall put to death.—(Manu, 9. 232.)

NOTES

'*Sowers of disaffection*'—This is how *Medhātithi* explains the phrase '*prakṛtīnām dūṣakān*'; *Vivādaratnākara* (p. 370) explains it as 'those who bring false charges against people.'

58. विष्णु] स्वाम्यमात्यसुहृत्कोषराष्ट्रदुर्गबलानि राज्याङ्गानि प्रकृतयः । तद्दूषकांश्च हन्यात् ।

58. Master, Minister, Ally, Treasury, People, Fort and Army—these are the basic constituents of the kingdom; one

who sows dissension among these should be put to death.— Viṣṇu in *Vivādaratnākara*, p. 370; and in *Vivādachintāmaṇi*, p. 163.)

59. याज्ञवल्क्य 2. 277.] शस्त्रावपाते गर्भस्य पातने चोत्तमो दमः ।
उत्तमो वाऽधमो वापि पुरुषस्त्रीप्रमापणे ॥

59. For striking a man with a weapon, and for causing abortion,—the punishment is the highest amercement;—the highest or the lowest amercement for the killing of a man or woman.—(Yājña. 2. 277.)

NOTES

'*The highest or the lowest amercement.*'— Whether it is to be the highest or the lowest shall depend upon the character of the person killed—(*Mitākṣarā*); - it is to be the highest for killing a man and the lowest for killing a woman.—(*Aparārka.*)

'*Causing abortion*'— This refers to cases other than those of the slave-girl or the Brāhmaṇa woman, for which two cases other penalties have been laid down—in the case of the pregnant slave-girl, the penalty is a fine of 100 *Paṇas*, and in that of the pregnant Brāhmaṇa woman, the punishment is the same as that for the killing of a Brāhmaṇa - (*Mitākṣarā.*)

60. उशनस्] परिक्लेशेन पूर्वः स्यात् भैषज्येन तु मध्यमः ।
प्रहारेण तु गर्भस्य पातने दण्ड उत्तमः ॥

60. For causing abortion by means of pressure (on the womb), the first amercement; for causing it by means of medicines, the middle amercement; and for causing it by striking, the highest amercement.—(Ushanas in *Vivādaratnākara*, p. 371; in *Vivādachintāmaṇi*, p. 163; and in *Aparārka*, p. 850.)

61. कात्यायन] व्यापादनेन तत्कारी वधं चित्रमवाप्नुयात् ।

61. In the case of murder, he who has committed it should suffer the various forms of death.—(Kātyāyana in *Vivādaratnākara*, p. 371.)

62. बृहस्पति 22. 29-30.] साहसं पञ्चधा प्रोक्तं वधस्तत्राधिकः स्मृतः ।
तत्कारिणो नार्थदमैः शास्या वध्याः प्रयत्नतः ॥
प्रकाशवधका ये च तथा चोपांशुघातकाः ।
राज्ञा सम्यग् धनं हृत्वा हन्तव्या विविधैर्वधैः ॥

62. Man-slaughter is the worst of the five forms of crime; those who have committed it should not be amerced in a fine;

they shall be put to death.--Both notorious murderers and secret assassins shall be put to death by various modes of execution, after their property has been confiscated.—(Bṛhaspati, 22. 29-30.)

NOTES

This rule applies to the Kṣattriya and others murdering a Brāhmaṇa.—(*Smṛtichandrikā*, p. 723 and also *Parāsharamādhava*, p. 310.)

63. बृहस्पति 22. 31—33.] एकस्य बहवो यत्र प्रहरन्ति रुषान्विताः ।
मर्मप्रहारदोषस्तु घातकस्य उदाहृतः ॥
मर्मघाती तु यस्तेषां यथोक्तं दापयेद्धनम् ।
आरम्भकृत् सहायश्च दोषभाजस्तदर्धतः ॥
क्षतस्याल्पमहत्त्वं च मर्मस्थानं च यत्नतः ।
सामर्थ्यं चानुबन्धं च ज्ञात्वा चिह्नैः प्रसाधयेत् ॥

63. When several persons, in anger, beat a single man and kill him, the responsibility for his death shall lie on him who struck the fatal blow; he shall suffer the penalty prescribed for murder; the first striker and his associates shall suffer half the penalty. The exact punishment shall be determined after considering the severity of the wound, the seat of vital power, the strength of the victim and the repetition of the blows.—(Bṛhaspati, 22. 31—33 ; in *Vivādaratnākara*, p. 373.)

64. व्यास] ज्ञात्वा तु घातकं सम्यक् ... ...
हन्याच्चित्रवधोपायैरुद्वेजनकरैर्नृपः ।
प्रसह्य घातिनश्चैव शूलानारोपयेन्नरान् ॥

64. Having found out the murderer, the king shall put him to death by various painful methods ; those who have been very violent in their methods should be impaled.—(Vyāsa in *Smṛtichandrikā*, p. 723.)

65. बौधायन] क्षत्रियादीनां ब्राह्मणवधे वधः सर्वस्वहरणं च ।
तेषामेव तुल्यावकृष्टवधे यथाबलमनुरूपं च दण्डं प्रकल्पयेत् ।
क्षत्रियवधे गोसहस्रमृषभाधिकं राज्ञ उत्सृजेत् । वैरनिर्यात-
नार्थं शतम् । वैश्ये दश । शूद्रे वृषभश्चाधिकः । शूद्रवधेन
गोवधः स्त्रीवधश्च व्याख्यातः अन्यत्रात्रेय्याः ॥

65. For killing a Brāhmaṇa, the Kṣattriya and others shall be put to death, after their entire property has been confiscated. Among Kṣattriya and the other castes, for killing one of the same or a lower caste, the penalty imposed shall be in accordance with the strength and capacity of the murderer.—If a Brāhmaṇa kills a Kṣattriya, he shall surrender to the king a thousand cows and a bull ; if he has killed him in revenge, he shall pay a fine of 100. If he kills a Vaishya he shall surrender a hundred cows ; if a Shūdra, ten cows ; a bull being given in every case ; the same for killing a woman or a cow ; except when the woman killed was in her courses, (in which case the punishment shall be the same as that for killing a Kṣattriya).—(Baudhāyana in *Aparārka*, p. 850 ; in *Vivādaratnākara*, p. 372 ; in *Vivādachintāmaṇi*, p. 164 ; and in *Smṛtichandrikā*, p. 723.)

66. नारद] न वधं ब्राह्मणोऽर्हति ।
शिरसो मुण्डनं दण्डस्तस्य निर्वासनं पुरात् ।
ललाटे चाभिशस्ताङ्कः प्रयाणं गर्दभेन तु ॥

66. There is no death-penalty for the Brāhmaṇa ; if he has committed a crime for which the death-penalty has been prescribed, his head shall be shaved and after having been branded on his forehead, he shall be banished from the city on an ass.—(Nārada in *Vivādaratnākara*, p. 374.)

67. याज्ञवल्क्य (?)] सुवर्णशतमेकं च वधार्हो दण्डमर्हति ।
अङ्गच्छेदे तदर्धं तु विवासे पञ्च विंशतिम् ॥

67. The Brāhmaṇa deserving death should be fined 101 '*Suvarṇas*';—he who deserves to have his limb cut off, shall pay a fine of half that amount ; and if he deserves to be banished, he shall pay 25 '*Suvarṇas*.'—(Yājña. in *Vivādachintāmaṇi*, p. 160.)

68. यम] न शारीरो ब्राह्मणस्य दण्डो भवति कर्हिचित् ।
गुप्ते तु बन्धने बद्ध्वा राजा भक्तं प्रदापयेत् ॥
अथवा बन्धनं रज्ज्वा कर्म वा कारयेन्नृपः ।
मासार्धमासं कुर्वीत कार्यं विज्ञाय तत्त्वतः ॥
यथापराधं विप्रं तु विकर्माण्यपि कारयेत् ॥

68. For the Brāhmaṇa there is no corporal punishment. He shall be imprisoned in a well-guarded prison and given food; or he shall be tied up with a rope and compelled to do work even of the lowest kind for a month or a fortnight, in accordance with the nature of his crime.—(Yama in *Vivādaratnākara*, p. 374; and in *Vivādachintāmaṇi*, p. 164.)

69. याज्ञवल्क्य 2. 231.] यः साहसं कारयति स दाप्यो द्विगुणं दमम् ।
यश्चैवमुक्त्वाऽहं दाता कारयेत् स चतुर्गुणम् ॥

69. He who gets a crime committed by another person should be made to pay double the fine prescribed for that crime.—He who incites some one to commit a crime, saying 'I shall pay all that you may incur by doing this act,' shall pay four times that fine.—(Yājña. 2. 231; also *Arthashāstra*, 3. 17.)

NOTES

If this abettor pleads extenuating circumstances, such as sudden provocation, or intoxication or ignorance, he should suffer the same punishment as the person who committed the crime.—(*Arthashāstra*, 3. 17.)

70. कात्यायन] आरम्भकृत्सहायश्च तथा मार्गानुदेशकः ।
आश्रयः शस्त्रदाता च भक्तदाता विकर्मणाम् ॥
अनिषेद्धा क्षमो यः स्यात् सर्वे ते कार्यकारिणः ।
यथा शक्त्यनुरूपं च दण्डमेषां प्रकल्पयेत् ॥

70. The man who begins the act, he who helps him, he who shows the way, he who gives shelter, he who supplies the weapons to the miscreants,—he who does not prevent the act, though able to do so,—all these are perpetrators of the crime; and should be punished proportionately.—(Kātyāyana in *Vivādaratnākara*, p. 375; in *Vivādachintāmaṇi*, p. 167; and in *Smṛtichandrikā*, p. 724.)

71. नारद] अयुक्तं साहसं कृत्वा प्रत्यासत्तिं भजेत यः ।
ब्रूयात् स्वयं वा सदसि तस्यार्धविनयः स्मृतः ॥

71. If a man, having committed a crime, surrenders himself, or makes a confession in court, his penalty shall be half of what is prescribed.—(Nārada in *Vivādaratnākara*, p. 376; and in *Vivādachintāmaṇi*, p.168.)

DETECTION OF CRIMINALS

72. याज्ञवल्क्य 2. 280-281.] अविज्ञातहतस्याशु कलहं सुतबान्धवाः ।
प्रष्टव्या योषितश्चास्य परपुंसि रताः पृथक् ॥
स्त्रीद्रव्यवृत्तिकामो वा केन वा सह संगतः ।
तत्प्रदेशसमासन्नं पृच्छेद्वापि शनैःशनैः ॥

72. When some one has been killed by an unknown person, his sons and relations should be questioned regarding any quarrels that he may have had recently ; women of bad character should also be questioned as to whether he had gone anywhere seeking for a woman or wealth or a living,—in whose company he had gone out and so forth. Questions shall also be put to persons found near the scene of the crime.—(Yājña. 2. 280-281.)

73. बृहस्पति 22. 34—38.] हतः सन्दृश्यते यत्र घातकस्तु न दृश्यते ।
पूर्ववैरानुमानेन ज्ञातव्यः स महीभुजा ॥
प्रातिवेश्यानुवेश्यौ च तस्य मित्रारिबान्धवाः ।
प्रष्टव्या राजपुरुषैः सामादिभिरुपक्रमैः ॥
विज्ञेयोऽसाधुसंसर्गात् चिह्नहोढेन मानवैः ।
गृहीतः शङ्कया यस्तु न तत् कार्यम्प्रपद्यते ॥
शपथेन विशोद्धव्यः ।
दिव्यैर्विशुद्धो मोच्यः स्यात् अशुद्धो वधमर्हति ॥

73. In a case where the dead body has been found, but the murderer cannot be discovered, the king shall trace him by drawing inferences from his previous enmities.—His immediate neighbours and their neighbours, as well as his friends, enemies and relatives, shall be questioned by the king's officers with persuasion and other methods.—The guilty person may be found out from his keeping bad company, from signs of the crime or him, and from the possession of stolen property.—He who has been arrested on suspicion and does not confess his guilt shall clear himself by an ordeal.—He who has been cleared by an ordeal shall be released and if not cleared, he shall be put to death.—(Bṛhaspati, 22. 34—38 ; in *Vivādaratnākara*, pp. 377-378 ; in *Smṛtichandrikā*, p. 722 ; in *Parāsharamādhava*, p. 309.)

NOTES FROM ARTHASHASTRA

Post-mortem Examination

In cases of sudden death, the dead body shall be smeared with oil, then examined. If it is found that urine and fasces have come out, the stomach and the skin are full of wind, the hands and feet swollen, the eyes open, the neck bearing marks of violence, it should be taken as a case of death by strangulation.—If the arms and legs are contracted and drawn in, it should be taken as a case of death by hanging.—If the hands, feet and abdomen are swollen, the eyes sunk, the navel protruding,—it should be regarded as a case of death by impalement.—If the arms and the eyes are protruding, the tongue lying between the teeth, the stomach swollen, it should be regarded as a case of death by drowning.—If the body is smeared with blood, the limbs broken and pierced, it should be regarded as a case of death by means of sticks or stones.—If the body is broken and torn, it should be regarded as a case of death by throwing down from a high place.—If the hands, feet, teeth and nails are black, the flesh, hair and skin hanging loosely, froth coming out of the mouth,—it should be regarded as a case of death by poisoning.—If with those marks a bleeding puncture is found, it is a case of snake-bite.—If the clothes and limbs are thrown about hither and thither, it is a case of death by intoxicating drugs.—In case of death by poisoning, the remnant of food eaten by the man should be examined by means of milk.—If a piece of the heart, thrown into fire, make a '*chit-chit*' sound, and assumes the colours of the rainbow, it should be regarded as a clear case of poisoning.—The dead man's servants should be examined and it should be found out if any of them had been recently abused or beaten by him;—also his wife who may have been unhappy or in love with some other man,—also such relation of his as might have been expecting to inherit his property or his women.—In cases of suicide, it should be found out what wrong he had lately suffered.—The causes of anger leading to death are—some wrong done through one's wife or property, rivalry, enmity, trade, and the eighteen kinds of dispute.—If a man has killed himself or got himself killed by others, or he has been killed by thieves or by other enemies,—the murder shall be investigated through people who were near the dead man. The man who had called him, he with whom he was seated, he with whom he had started or by whom he had come to the place where he met his death,—every one of these should be questioned. Those who were near the murdered man should be asked—By whom was he brought here? Who was the armed person whom you saw hidden? If the murdered man has no relations then those persons should be questioned who may be found to be using the clothes and ornaments that were found on the dead body.—(*Arthashāstra*, 4. 7.)

EXCEPTIONS

74. मनु 8. 348-349.] शस्त्रं द्विजातिभिर्ग्राह्यं धर्मो यत्रोपरुध्यते ।
द्विजातीनां च वर्णानां विप्लवे कालकारिते ॥
आत्मनश्च परित्राणे दक्षिणानां च सङ्गरे ।
स्त्रीविप्राभ्युपपत्तौ च घ्नन् धर्मेण न दुष्यति ॥

74. Twice-born persons may carry arms,—when religion is interfered with, and when there is confusion among the twice-born castes caused by the exigencies of time.—In one's own defence, in cases of hindrance of sacrificial fees, in cases of outrage on Brāhmaṇas and women,—if one strikes in the cause of right, he incurs no sin.—(Manu, 8. 348-349.)

NOTES

'*In his own defence*'—*i e.*, for defending his own body, and his wife, children and property, against all dangers.

75. बौधायन] ब्राह्मणार्थे वा गवार्थे वा वर्णानां वाऽपि सङ्करे ।
गृह्णीयातां विप्रविशौ शस्त्रं धर्मव्यतिक्रमे ॥

75. For the sake of a Brāhmaṇa, for the sake of a cow, when there is a confusion of castes, even the Brāhmaṇa and the Vaishya shall bear arms.—(Baudhāyana in *Smṛtichandrikā*, p. 725.)

76. गौतम] प्राणसंशये ब्राह्मणोऽपि शस्त्रमाददीत ।

76. Where his life is in danger, even the Brāhmaṇa may take up arms.—(Gautama in *Smṛtichandrikā*, p. 725.)

77. विष्णु] आत्मत्राणे वर्णसङ्करे वा ब्राह्मणवैश्यौ शस्त्रमाददीयाताम् ॥

77. In self-defence and when there is confusion of castes, the Brāhmaṇa and the Vaishya may bear arms.—(Viṣṇu in *Smṛtichandrikā*, p. 725.)

78. मनु 3. 350-351.] गुरुं वा बालवृद्धौ वा ब्राह्मणं वा बहुश्रुतम् ।
आततायिनमायान्तं हन्यादेवाविचारयन् ॥
नाततायिवधे दोषो हन्तुर्भवति कश्चन ।
प्रकाशं वाऽप्रकाशं वा ॥.

78. Without hesitation one should strike an assassin,—be he a preceptor, a child, or an aged man, or a highly learned Brāhmaṇa.—No evil accrues to the slayer for killing an assassin, either openly or secretly.—(Manu, 8. 350-351.)

NOTES

'*Assassin*'—Defined by Vashiṣṭha (3. 16, in *Vyavahāramayūkha*, p. 241) as—' one who is going to set fire or administer poison or strike with a weapon, or to rob one's wealth, fields or wife.' *Medhātithi* defines him as ' a man intent

upon destroying body, one's property, wife or children.'—Kātyāyana (*Smṛtichandrikā*, p. 731) defines the assassin as—'one who has raised a sword to strike, who is aiming an arrow, who is encompassing one's murder by means of magic spells, backbiters to the king, one who tries to violate one's wife, one who is ever seeking one's weak points, one who is trying to deprive one of his good name and character, one who is going to strike at one's life and property.'

79. कात्यायन] विनाशहेतुमायान्तं हन्यादेवाविचारयन् ॥

79. Where a person intent upon destroying one is approaching, he should be struck down without hesitation.—(Kātyāyana in *Smṛtichandrikā*, p. 727.)

NOTES

All these texts refer to such assassins as are not Brāhmaṇas—says *Vyavahāramayūkha* (p. 241).

80. वशिष्ठ 3. 17.] आततायिनमायान्तमपि वेदान्तपारगम् ।
जिघांसन्तं जिघांसीयान्न तेन ब्रह्महा भवेत् ॥

80. Where an assassin intent upon destroying one is approaching, one should strike him down,—even though he be a person versed in the Vedas. By striking such a person one does not incur the guilt of killing a Brāhmaṇa.—(Vashiṣṭha, 3. 17; in *Vyavahāramayūkha*, p. 241.)

81. बृहस्पति] नाततायिवधे हन्ता किल्विषं प्राप्नुयात् क्वचित् ॥

81. The slayer commits no wrong in killing an assassin intent upon destroying him.—(Bṛhaspati in *Smṛtichandrikā*, p. 729.)

82. कात्यायन] उद्यतानां तु पापानां हन्तुर्दोषो न विद्यते ।
निवृत्तास्तु यदारम्भात् ग्रहणं न वधः स्मृतः ॥

82. When a wicked man has attacked one, the latter incurs no guilt if he kills him. But if the man has stopped before actually striking, he shall be captured, not killed.—(Kātyāyana in *Smṛtichandrikā*, p. 729.)

83. सुमन्तु] आततायिवधे न दोषोऽन्यत्र गोब्राह्मणात् ।
यदा हतः प्रायश्चित्तं स्यात् ॥

83. There is nothing wrong in killing an assassin,—except when he is a bull or a Brāhmaṇa, in whose case the slayer would be liable to expiatory rites.—(Sumantu in *Smṛtichandrikā*, p. 729.)

84. देवल] उद्यम्य शस्त्रमायान्तं भ्रूणमप्याततायिनम् ।
निहत्य भ्रूणहा न स्यात् अहत्वा भ्रूणहा भवेत् ॥

84. When an assassin is attacking a man with upraised weapon, if the latter kills him,—even if he be a Brāhmaṇa,—the slayer does not incur the guilt of Brāhmaṇa-killing; in fact, he would incur the guilt of Brāhmaṇa-slaughter, if he did not kill him.—(Devala in *Smṛtichandrikā*, p. 729; and in *Vyavahāramayūkha*, p. 242.)

85. गालव] स्वाध्यायिनं कुले जातं यो हन्यादाततायिनम् ।
अहत्वा भ्रूणहा स स्यान्न हत्वा भ्रूणहा भवेत् ॥

85. An assassin, even though he be a Vedic student or one born of a noble family,—should be killed; one would incur the guilt of Brāhmaṇa-killing if he did not kill him;—not if he did kill him.—(Bṛhaspati in *Vyavahāramayūkha*, p. 242.)

NOTES FROM ARTHASHĀSTRA

DETECTION OF HIDDEN CRIMINALS

(*a*) The magistrate shall keep a vigilant eye upon the following persons: The ascetic reputed to possess occult powers, the renunciate, vagrants, dancers, libertines, astrologers, fortune-tellers, readers of portents, physicians, drunkards, the dumb, the deaf, the blind, the idiot, traders, artisans, artists, actors, attendants on prostitutes, wine-seller, confectioner, seller of cooked meat and vegetables.—He shall also keep himself informed of the honesty and dishonesty of the village-officers.—If he suspects any one of these latter of bad livelihood, he shall have him spied upon by spies belonging to the same caste; this spy shall come to the suspected officer and tell him—'such and such accused who is related to me is going to be brought up for trial before you, please accept this present on his behalf and do what you can to help him out of this difficulty.'—If the officer accepts the present offered, he should be regarded as being in the habit of receiving illegal gratifications and as such, should be banished.—To another village officer, the spy shall say—'such and such a person is very wealthy, have him arrested for such and such a crime';—thereupon if the officer does as suggested, he shall be regarded as addicted to bribery, and hence banished.—Under the pretence of having an accused called up to answer a charge, the spy may approach a

number of men and ask them to bear false evidence on his behalf, offering them large amounts of money for the purpose;—if they accept his offer, they should be regarded as perjuring witnesses and banished.—Any one who is suspected of being a dealer in magic spells, may be approached by the spy with the proposal—'I love the daughter of such and such a person, please try to win for me her love, and in return please accept this present';—if he accepts the offer, he shall be regarded as a dealer in magic spells and banished.—If a person is suspected of dealing in poisons, he shall be approached by the spy with the proposal—'such and such a person is my enemy, please encompass his death, and accept this present from me';—if he accepts the offer, he should be regarded as an administerer of poison and banished.—If a person is suspected of being possessed of materials for disguising himself—such as the oxides of metals, coals, bellows, pincers, and so forth,—the spy shall approach him as a pupil and request him to teach the art of disguising and personating; and then have him arrested and banished.—(*Arthashāstra*, 4. 4.)

Miscellaneous Punishments

(*b*) If the bailment for delivery is not delivered, or the deposit or pledge is not restored, at the proper time and place,—if engagements regarding time and place are not kept,—if one exerts pressure on the Brāhmaṇa for the payment of tolls and crossing fares,—if one ignores his near neighbours in the matter of invitation,—there shall be a fine of 12 *Paṇas*.—(*Arthashāstra*, 3. 20.)

(*c*) If one does not give what he has promised,—if one catches his brother's wife by the hand,—if one goes to a prostitute kept by another man,—if one buys a commodity which had been bid for by another man,—if one breaks into a sealed room,—if one injures forty neighbouring families,—there shall be a fine of 48 *Paṇas*.—(*Arthashāstra*, 3. 20.)

(*d*) If one has taken possession of something belonging to several persons in common with himself, and denies it,—if he has forcible connection with a widow living by herself,—if a *Chaṇḍāla* touches a noble-born woman,—if one fails to go forward to help a man in distress,—if he goes forward without cause,—if, at the rites in honour of Gods and *Pitṛs*, one feeds Buddhists, Jains or Shūdra ascetics,—the fine shall be 100.—(*Arthashāstra*, 3. 20.)

(*e*) If a man puts on oath another person, without the orders of the Judge,—if a man does work to the performance of which he is not entitled, if one deprives small animals of their virility,—if one procures, by medicines, the abortion of a slave girl,—the fine shall be 250 *Paṇas*.—(*Arthashāstra*, 3. 20.)

(*f*) Between father and son, husband and wife, brother and sister, maternal uncle and nephew, teacher and pupil,—if one forsakes the other, without the latter being an outcast;—if a number of men journeying together abandon anyone of their party who may have fallen ill on the journey,—the fine shall be 250;—if they abandon him in a forest, it will be 500;—if in order to avoid this, they put him to death, the fine shall be 1,000.—(*Arthashāstra*, 3. 20.)

(*g*) If one imprisons a man who should not be imprisoned,—or lets off one who should be imprisoned,—or imprisons a minor boy,—the fine shall be 1,000.—(*Arthashāstra*, 3. 20.)

(*h*) One who is very charitable, one who is devoted to austerities, one who is afflicted with disease, one who is oppressed by hunger or thirst, a foreigner,

and one who is groaning under punishments,—should be favourably dealt with.—(*Arthashāstra*, 3. 20.)

(*i*) If a man strikes another in a quarrel, various forms of punishment shall be inflicted. If the man struck dies within a week, the striker should suffer death pure and simple;—if he dies within a fortnight, the striker shall suffer the highest amercement;—if he dies within a month, he shall be fined 500.—(*Arthashāstra*, 4. 11.)

(*j*) If a man strikes another with a weapon, he should suffer the highest amercement; if he strikes him in arrogance, his hands should be cut off;—if he strikes in ignorance, he shall be fined 200;—if he kills him, he shall suffer death.—(*Arthashāstra*, 4. 11.)

(*k*) If one brings about abortion by striking, he shall suffer the highest amercement; if he causes it by medicines, the middle amercement; if by making the woman do hard labour, the first amercement.—(*Arthashāstra*, 4. 11.)

(*l*) One who has killed a man or a woman,—one who has forcible connection with a woman,—one who cuts off the ears or nose of men, one who has threatened to kill people,—one who has committed robbery in the village,—one who has committed burglary by making a hole in the wall,—one who has interfered with travellers' rest-houses,—one who has injured or stolen the horse, the elephant or the chariot of the king,—all these shall be impaled.—And if any men perform the rites of cremation for the persons thus impaled shall meet with the same punishment or pay a fine of 1,000.—(*Arthashāstra*, 4. 11.)

(*m*) If a man provides food or clothes or implements, or fire, or advice to murderers or thieves—or helps in the disposal of the property stolen,—he shall be fined 1,000.—If he has done it unknowingly, he shall be warned and reprimanded.

(*n*) The wife and children of the murderer or thief shall be acquitted, if they have not been taken into confidence by the culprit; if they have been taken into confidence, they shall be hauled up.—(*Arthashāstra*, 4. 11.)

(*o*) If a man encourages robbers or the king's enemies,—or sows disaffection among the army or the kingdom,—he shall be put to death by applying fire to his hands and head. If he is a Brāhmaṇa, he should he placed in a dungeon for life.—(*Arthashāstra*, 4. 11.)

(*p*) If a man kills his mother, father, brother, teacher or an ascetic, he shall be put to death by applying fire to his skin and head. If he insults any of these, his tongue shall be cut off.—If he strikes any of them, he shall lose the limb with which he strikes him.—(*Arthashāstra*, 4. 11.)

(*q*) If a man kills another by chance,—or has stolen a herd of cattle (*i.e.*, at least ten heads),—he shall suffer simple death.—(*Arthashāstra*, 4. 11.)

(*r*) If a man breaks a dyke holding water, he should be drowned there and then.—If he breaks a dyke which is not holding any water at the time, he shall pay a fine of 1,000—If the dyke he has broken has been in a damaged condition, his fine shall be 500.—(*Arthashāstra*, 4. 11.)

(*s*) If a man has administered poison,—or if a woman has killed a man,—they shall be drowned; not so, if the woman is pregnant, in which case one shall be drowned at least one month after delivery.—(*Arthashāstra*, 4. 11.)

(*t*) If a woman kills her husband, or an elder, or her child,—or if she has

administered fire or poison,—or if she has made a hole in the wall for committing burglary,—she shall be trampled to death by cows.—(*Arthashāstra*, 4. 11.)

(*u*) A man who has set fire to a pasture-land or to a field or to a threshing ground, or to a house or to a forest, shall be burnt to death.—(*Arthashāstra*, 4. 11.)

(*v*) One who speaks ill of the king,—or discloses his secrets,—or spreads evil rumours regarding him,—or steals food from the Brāhmaṇa's kitchen,—shall have his tongue pulled out.—(*Arthashāstra*, 4. 11.)

(*w*) If a man who is not a soldier by profession steals arms or armour, he shall be killed by arrows. If he is a soldier by profession he shall be fined 1,000.—(*Arthashāstra*, 4. 11.)

(*x*) One who cuts off a man's penis or testicles shall have his penis and testicles cut off;—if one injures a man's tongue or nose, his two fingers shall be cut off.—(*Arthashāstra*, 4. 11.)

General Rules Regarding Punishments

(*y*) There are four kinds of punishment—(*a*) Beating with the stick—six forms; (*b*) Lashes—seven forms; (*c*) Tying the two hands at the back and then tying them to the head—two forms; and, (*d*) Pouring salt water into the nose.—In addition to these are the following: Striking with canes,—twelve forms; Tying up of the two knees to the head—two forms; striking with creepers—twenty forms; slapping—thirty-two forms; tying up of the left hand and left foot behind the back—two forms; tying up the two hands upwards and tying up the two legs upwards—two forms; piercing a needle under the nails; burning one joint of the finger; making the man drink oil and then exposed to heat; making the man lie down on water-sprinkled bed of *Balwaja* leaves, during a wintry night.

(*z*) Whatever the crime, the Brāhmaṇa shall not suffer corporal punishment; in order that people may avoid him he should be branded on the forehead,—with the sign of the dog, in cases of theft; with that of a headless human body, in cases of man-slaughter; with that of the female organ in cases of violating the teacher's bed; and with that of the 'wine-flag' in cases of wine-drinking. The king shall have him paraded in the streets and then banished from the kingdom.—(*Arthashāstra*, 4. 8.)

(*z*-1) If a man makes a Brāhmaṇa eat what should not be eaten, he shall be fined 1,000;—if a Kṣattriya, 500;—if a Vaishya, 250;—if a Shūdra, 54 *Paṇas*. Those who themselves eat what should not be eaten shall be banished.—(*Arthashāstra*, 4. 13.)

(*z*-2) If a man enters another man's house during the day, he shall be fined 250; if at night, 500. In the day or at night, if he enters armed, he shall be fined 1,000.—(*Arthashāstra*, 4. 13.)

(*z*-3) Beggars and traders, the intoxicated, and the insane, or persons closely related to the householder, shall not be punished for entering his house,—except when they enter after having been forbidden.—(*Arthashāstra*, 4. 13.)

(*z*-4) If, after the first quarter of the night, a man mounts on the top of the wall of his own house, he shall be fined 250;—if on that of another man's

house, 500. The same for one who forcibly enters a village or garden.—(*Arthashāstra*, 4. 13.)

(z-5) When a man is attacked by a horned animal, if the owner of the animal does not rescue the man, he shall be fined 250; 500, if he refuses to help even on being requested to do so.—(*Arthashāstra*, 4. 13.)

(z-6) If a man yokes to the plough cattle dedicated to gods, or a bull or a heifer, he should be fined 500;—if he kills any of these, he shall be fined 1,000.—For killing sheep and other small useful animals, except at sacrifices and *Shrāddhas*—the fine is the price of the animals, and one has to supply another animal also.—(*Arthashāstra*, 4. 13.)

(z-7) When the nose-string has snapped, or the axle broken, or when the cart has had to move away backwards on account of an obstruction coming in front, or when there is a rush of conveyances and men,—if an injury is caused by a cart, no one is to blame. Apart from these circumstances if any one is killed, the driver is to suffer the penalty prescribed for 'man-slaughter.'—If it is an animal that is killed, the culprit shall supply another animal also.

(z-8) If the driver is a minor, the person sitting in the cart is to be punished.—If the conveyance causing the death is driven by a boy or is without a man in charge, the king shall confiscate it.—(*Arthashāstra*, 4. 13.)

CHAPTER XX

GAMBLING AND BETTING

DEFINITION

1. नारद 17. 1.] अक्षवन्धशलाकाद्यैर्देवनं जिह्मकारितम् ।
पणक्रीडा वयोभिश्च ।

1. 'Gambling' is artful playing with dice, leather-strips, ivory-staves and such other things. 'Betting' consists in sporting with birds (and other animals).—(Nārada, 17. 1; in *Vivādaratnākara*, p. 610.)

NOTES

'*Such other things*'—*e.g.*, chess-men (*Vivādaratnākara*, p. 610), shells (*Parāsharamādhava*, p. 389).—'*Animals*'—such as rams, and also wrestlers.

2. मनु 9. 223.] अप्राणिभिर्यत् क्रियते तल्लोके द्यूतमुच्यते ।
प्राणिभिः क्रियते यस्तु विज्ञेयः स समाह्वयः ॥

2. That which is done through inanimate things is 'Gambling'; what is done through animate things is 'Betting.'—(Manu, 9. 223.)

3. बृहस्पति 26. 3.] अन्योन्यं परिगृहीताः पक्षिमेषमृगादयः ।
प्रहरन्ते कृतपणास्तं वदन्ति समाह्वयम् ॥

3. When birds, rams, bulls or other animals are made to fight against one another, after a wager has been laid on them, it is called 'Betting.'—(Bṛhaspati, 26. 3; in *Vivādaratnākara*, p. 610.)

4. मनु (?)] काकिन्यो वध्रिकाश्चैव शलाका मौर्य एव च ।
अक्षाः सबीजाः कुहका द्यूतोपकरणानि षट् ॥

4. Shells, leather-strips, ivory-staves, *maurya* (?), dice, and the *Kuhaka*-seed (?),—these are the six implements of Gambling.—(Manu in *Aparārka*, p. 802.)

RULES OF GAMBLING.

5. मनु 9. 221--228.] द्यूतं समाह्वयं चैव राजा राष्ट्रान्निवारयेत् ।
प्रकाशमेतत्तास्कर्यं यद्देवनसमाह्वयौ ।
तयोर्नित्यं प्रतीघाते नृपतिर्यत्नवान् भवेत् ।
द्यूतं समाह्वयं चैव यः कुर्यात् कारयेत वा ।
तान् सर्वान् घातयेद्राजा ... ... ।
प्रच्छन्नं वा प्रकाशं वा तन्निषेवेत यो नरः ।
तस्य दण्डविकल्पः स्यात् यथेष्टं नृपतेस्तथा ॥

5. The King shall exclude from his kingdom all Gambling and Betting. Gambling and Betting are open theft, and should be suppressed . . . He who either does the Gambling or the Betting, or helps others to do it,—all these the king shall strike . . . If a man has recourse, either openly or secretly, to this vice, the form of punishment inflicted upon him shall be in accordance with the king's discretion.—(Manu 9. 221—228.)

NOTES

All this refers to such Gambling and Betting as are unauthorised by the king and are not supervised by an officer specially appointed for the purpose,—and also to those that are accompanied by fraud and cheating.—(*Aparārka* and *Mitākṣarā* on p. 2. 202; *Parāsharamādhava*, p. 393; *Vīramitrodaya*, p. 721.)

6. कात्यायन] ध्रुवं द्यूतात् कलिर्यस्मात् ... ...तस्माद्राजा
निवर्तेत विषये व्यसनं हि तत् ॥ वर्तेत चेत्
प्रकाशं तु द्वारावस्थिततोरणम् । ....
कारयेत् तत् करप्रदम् ॥

6. Inasmuch as Gambling is a source of quarrel, the king shall exclude it from his realm. But if it is to be held, it should be held openly, with festoons hanging on the door, and the gaming-house should be made to yield revenue.—(Kātyāyana in *Vivādaratnākara*, p. 611.)

7. बृहस्पति 26. 1-2.] द्यूतं निषिद्धं मनुना सत्यशौचधनापहम् ।
तत् प्रवर्तितमन्यैश्च राजभागसमन्वितम् ॥
सभिकाधिष्ठितं कार्यं तस्करज्ञापकं हि तत् ॥

7. Gambling has been prohibited by Manu because it is subversive of truth, honesty and wealth. It has been permitted

by other legislators under such conditions as may bring a revenue to the king.—It shall take place under the supervision of the Superintendent of Gaming Houses; as it helps in the detection of thieves—(Bṛhaspati, 26. 1-2.)

8. याज्ञवल्क्य 2. 203.] द्यूतमेकमुखं कार्यं तस्करज्ञानकारणात् ॥

8. Inasmuch as it helps in the discovery of thieves, Gambling shall be carried on under the supervision of one officer appointed by the king.—(Yājña. 2. 203.)

NOTES

(a) The superintendent of Gambling shall have gambling carried out at one place, for the purpose of detecting men of bad livelihood.-(*Arthashāstra*, 3. 20.)

(b) For gambling at any place except the one authorised,—there shall be a fine of 12 *Paṇas*.—(*Arthashāstra*, 3. 20.)

9. बृहस्पति 26. 8.] सभिको ग्राहकस्तत्र दद्याज्जेत्रे नृपाय च ॥

9. The Superintendent of Gaming Houses shall receive the stakes and make payments to the winning gambler and also to the king.—(Bṛhaspati, 26. 8; in *Vivādaratnākara*, p. 612.)

NOTES

According to all authorities—except *Aparārka*—the '*Sabhika*,' *superintendent* of the Gaming House, is different from the *Keeper* of the Gaming House who supplies the room and all the requisites of Gambling; the '*Sabhika*' is an officer appointed by the king for supervising the Gambling. *Aparārka* (2. 199), however, makes it the function of the '*Sabhika*' to provide the house, the requisite implements of Gambling and also to advance money to the Gamblers.

'*Shall receive the stakes*'—realising them from the losing players, and if there is delay in this realisation, he shall pay out of his own pocket to the winner the amount won and also the percentage due to the king.—(*Parāsharamādhava*, p. 390.)

10. कात्यायन] सभिकः कारयेद्द्यूतं देयं दद्यात् स्वयं नृपे ।
दशकं तु शतं वृद्धिं गृह्णीयाच्च पराजये ॥
जेतुर्दद्यात् स्वयं द्रव्यं जितं ग्राह्यं विपक्षकम् ।
सद्यो वा सभिकेनैव कितवाद्धनसंशये ॥

10. The superintendent of the Gaming House shall conduct the game, and himself pay the dues to the king; as his profit

he shall realise 10 per cent from the loser. To the winner he shall pay the stakes that have been won, and realise the amount from the loser within three fortnights,—or, if he has doubts regarding the solvency of the losing gambler, he shall realise it from him on the spot.—(Kātyāyana in *Aparārka*, p. 803; *Vivādaratnākara*, p. 612; *Vīramitrodaya*, p. 319; also Nārada, 17. 2; in *Aparārka*, p. 803.)

NOTES

The '*10 per cent*' also the superintendent shall realise along with the amount of the stakes.—(*Smṛtichandrikā*, p. 769.)

The superintendent of Gambling shall supply pure shells and dice.—If any one changes these, he shall be fined 12 *Paṇas*.—(*Arthashāstra*, 3. 20.)

11. नारद] अथवा कितवो राज्ञे दत्त्वा भागं यथोदितम् ।
प्रकाशदेवनं कुर्यात् ॥

11. Or (even without the superintendent) Gamblers may themselves carry on the game openly and pay the dues to the king.—(Nārada in *Aparārka*, p. 803; *Vivādaratnākara*, p. 612; *Parāsharamādhava*, p. 389.)

12. याज्ञवल्क्य 2. 199.] ग्लहे शतिकवृद्धेस्तु सभिकः पञ्चकं शतम् ।
गृह्णीयाद् धूर्तकितवात् इतराद्दशकं शतम् ॥

12. In connection with each stake, whatever is won by the winner—on that the superintendent shall realise 5 per cent from the clever gambler who has won; and from the other party—the loser—he shall realise 10 per cent.—(Yājña. 2. 199.)

NOTES

From the stakes that have been won, the superintendent shall receive 5 per cent; and shall realise from the winner also a certain amount as rent for the various kinds of dice, and for land, water and other things.—If he fails to correct the defects of the various articles relating to the game, he shall be fined double the amount of his fees.—(*Arthashāstra*, 3. 20.)

13. याज्ञवल्क्य 2. 200.] स सम्यक् पालितो दद्यात् राज्ञे भागं यथाकृतम् ।
जितमुद्ग्राहयेज्जेत्रे दद्यात्सत्यं वचः क्षमी ॥

13. The superintendent, being under the protection of the king, shall pay to the king the stipulated share; he shall

have the winnings made over to the winner, to whom he shall also patiently address words of assurance (if there is a delay in the payment of the winnings).—(Yājña. 2. 200.)

NOTES

'*He shall have, etc.*'—*i.e.*, realising it from the loser by putting him under restraint and such other means.—(*Mitākṣarā.*)

'*Words of assurance*'—such as 'I assure you that you will have all your dues paid to you within such and such a time.'—(*Aparārka.*)

14. नारद 17. 3.] द्विरभ्यस्ताः पतन्त्यक्षाः ग्लहे यस्याक्षदेविनः ।
जयं तस्यापरस्याहुः कितवस्य पराजयम् ।

14. When the dice thrown by a gambler twice repeatedly turn in his favour, he wins and the other party loses.—(Nārada, 17. 3; in *Vivādaratnākara*, p. 614.)

15. याज्ञवल्क्य 2. 201.] प्राप्ते भागे च नृपतिः प्रसिद्धे धूर्तमण्डले ।
जितं ससभिके स्थाने दापयेदन्यथा न तु ॥

15. When the gambling has been conducted in a recognised gaming house, under the supervision of the superintendent of the gaming house, and the royal fee in connection with which has been paid,—then alone shall the king compel the loser to pay the stakes won by the winner;—not otherwise.—(Yājña. 2. 201.)

NOTES

'*Otherwise,*'—*i.e.*, if it has been played secretly—without the cognizance of the superintendent,—and the royal dues have not been paid.—(*Mitākṣarā.*)

16. नारद 17. 7.] अनिर्दिष्टं तु यो राज्ञा द्यूतं कुर्वीत मानवः ।
न स तं प्राप्नुयात् कामं विनयं चैव सोऽर्हति ॥

16. If a man gambles with dice without authorisation from the king, he shall not get his stake and shall have to pay a fine.—(Nārada, 17. 7; in *Aparārka*, p. 803; *Vivādaratnākara*, p. 615; *Vivādachintāmaṇi*, p. 260; *Parāsharamādhava*, p. 392.)

17. नारद] परिहासकृतं यच्च यच्चाप्यविदितं नृपे ।
न स तं प्राप्नुयात् कामम् ॥

17. What has been staked in joke,—and without knowledge of the king,—shall not be received by the winner.—(Nārada in *Vivādaratnākara*, p. 615.)

18. नारद] भक्ष्यभोज्यान्नपानानि स्वल्पान्यन्यानि कानिचित् ।
प्रीत्या तु सकृदाजीवेत् प्रसंगं तु विवर्जयेत् ॥

18. The superintendent may accept from the gamblers small gifts of food and drink ; but shall avoid repetition of such gifts.—(Nārada in *Vivādaratnākara*, p. 615.)

19. बृहस्पति 26. 7.] रहो जितोऽनभिज्ञश्च कूटाक्षैः कपटेन वा ।
मोच्योऽभिज्ञोऽपि सर्वस्वं जितं सर्वत्र दापयेत् ॥

19. One who has lost in a secret game,—through ignorance of the rules, or through false dice, or through deceit, shall be released from the debt ; a man who has lost his entire property in the game shall not be compelled to pay all, even though he may be cognizant of the rules.—(Bṛhaspati, 26. 7 ; in *Aparārka*, p. 804 ; *Vivādaratnākara*, p. 616.)

20. कात्यायन] अनभिज्ञो जितो मोच्योऽभिज्ञो वापि जितो रहः ।
सर्वस्वेऽपि जितेऽभिज्ञं न सर्वस्वं प्रदापयेत् ॥

20. The loser, ignorant of the rules, shall be released ; so also the man who, though knowing the rules, has lost in a secret game ; the man who has lost his entire property shall not be compelled to pay it.—(Kātyāyana in *Aparārka*, p. 804 ; in *Vivādaratnākara*, p. 616.)

21. नारद 17. 5.] अशुद्धः कितवो नान्यदाश्रयेद् द्यूतमण्डलम् ।
प्रतिहन्यान्न कितवं दापयन्तं स्वमिच्छतः ॥

21. No gambler who has not cleared off his gambling debts shall ever enter another gaming house ; the king shall not prevent a gambler from realising his dues from the loser in any manner he chooses.—(Nārada, 17. 5 ; in *Aparārka*, p. 803 ; in *Vivādaratnākara*, p. 614.)

PENALTIES

22. नारद] कूटाक्षदेविनः पापान् राजा राष्ट्राद्विवासयेत् ।
कण्ठेऽक्षमालामासज्य ॥

22. Wicked men playing with false dice shall be banished from the kingdom with a wreath of dice hung round their necks.—(Nārada in *Mitākṣarā* on 2. 202.)

NOTES

For playing with false dice, the fine is 250 ; and the stakes won have to be refunded.—If there has been cheating and other malpractices, the punishment shall be that of the thief.—(*Arthashāstra*, 3. 20.)

23. बृहस्पति 26. 9.] कूटाक्षदेविनः पापा राजभागहराश्च ये ।
गणनावञ्चकाश्चैव दण्ड्यास्ते कितवाः स्मृताः ॥

23. Those wicked gamblers who use false dice in a game, or rob the king of his dues or cheat by making false computations, should be punished.—(Bṛhaspati, 26. 9 ; *Vivādaratnākara*, p. 616.)

24. बृहस्पति 26. 5.] ग्लहः प्रकाशः कर्तव्यो निर्वास्याः कूटदेविनः ।

24. A wager shall be laid openly ; gamblers cheating at play shall be turned out.—(Bṛhaspati, 26. 5.)

25. याज्ञवल्क्य 2. 202.] राज्ञा सचिह्नं निर्वास्याः कूटाक्षोपधिदेविनः ॥

25. Those who play with false dice or cheat at play shall be branded and banished.—(Yājña. 2. 202.)

NOTES

'*Branded*'—*e.g.*, with the mark of the dog's foot.—(*Vīramitrodaya*, p. 721.)

26. विष्णु] द्यूते कूटाक्षदेविनं करच्छेदः उपधिदेविनां सन्दंशच्छेदः ॥

26. In gambling those who play with false dice shall have their hands cut off ; those who cheat at gambling shall

have their two fingers cut off.—(Viṣṇu in *Vivādaratnākara*, p. 617; *Parāsharamādhava*, p. 392; *Vivādachintāmaṇi*, p. 260; *Vīramitrodaya*, p. 721.)

GAMBLING DISPUTES

27. नारद 17. 4.] कितवेष्ववतिष्ठेरन् कितवाः संशयं प्रति ।
त एव तत्र द्रष्टारस्तत्र चैते तु साक्षिणः ॥

27. When a dispute arises among gamblers, other gamblers shall step in, to act both as judges and as witnesses.—(Nārada, 17. 4.)

28. बृहस्पति 26. 6.] उभयोरपि सन्दिग्धौ कितवास्तु परीक्षकाः ।
यदा विद्वेषिणस्ते तु तदा राजा विचारयेत् ॥

28. When there is a point at issue between the two gambling parties, other gamblers shall examine and decide the matter; if they happen to be prejudiced against either party, the king shall investigate the case.—(Bṛhaspati, 26. 6; in *Vivādaratnākara*, p. 618; *Vīramitrodaya*, p. 720; *Parāsharamādhava*, p. 391.)

29. कात्यायन] विग्रहे च जये लाभे करणे कूटदेविनाम् ।
प्रमाणं सभिकस्तत्र शुचिः स्यात् सभिको यदि ॥

29. Whenever there is any dispute among gamblers—as to who has won, or who has lost, or if any one has cheated at the game,—the sole judge in the matter shall be the Superintendent of the Gaming House, if he is an honest person.—(Kātyāyana in *Vivādaratnākara*, p. 617.)

30. याज्ञवल्क्य 2. 202.] द्रष्टारो व्यवहाराणां साक्षिणश्च त एव हि ।

30. (In disputes regarding gambling) gamblers alone shall be made judges as well as witnesses.—(Yājña. 2. 202.)

NOTES

'*Made*'—by the king.—(*Mitākṣarā*.)

BETTING—PRIZEFIGHTS

31. बृहस्पति 26. 4.] द्वन्द्वयुद्धेन यः कश्चिदवसादमवाप्नुयात् ।
तत्स्वामिना पणो देयो यस्तत्र परिकल्पितः ॥

31. When in a prize-fight between two animals (or wrestlers), one is defeated, the wager settled shall be paid by the owner of that animal.—(Bṛhaspati, 26. 4; in *Aparārka*, p. 803; *Vivādaratnākara*, p. 614; *Vivādachintāmaṇi*, p. 259.)

32. याज्ञवल्क्य 2. 204.] एष एव विधिर्ज्ञेयः प्राणिद्यूते समाह्वये ।

32. The rules laid down in connection with Gambling are applicable to Betting which is Gambling with animals.—(Yājña. 2. 204; and Bṛhaspati, 26. 2.)

NOTES

'The rules regarding gambling are *mutatis mutandis* applicable to Betting, except in the case of betting on Learning or Art.'—(*Arthashāstra*, 3. 20.)

INDEX OF SANSKRIT TEXTS

अ

च

छ

भ

म

र

ल

ह